SUPREME COURT OF THE UNITED STATES.

No. 87.

ROBERT BARNWELL RHETT, PLAINTIFF IN ERROR,

vs.

ROBERT F. POE.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF SOUTH CAROLINA.

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S. D. Langtree, Print.

THE UNITED STATES OF AMERICA.

The President of the United States to the Judges of the Circuit Court of the United States, for the Sixth Circuit, in South Carolina District, greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea, which is in the said court, before you, between R. F. Poe, plaintiff, and R. Barnwell Rhett, defendant, a manifest error hath happened, to the great damage of the said defendant, as aforesaid, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ; so that you have the same at Washington on the second Monday of January next, in said Supreme Court, then and there had and held. And that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States, should be done.

Witness, the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and forty-one.

Issued at office, in the City of Charleston, under the [L. S.] seal of said Circuit Court, the nineteenth day of May, A. D. one thousand eight hundred forty-one.

H. Y. GRAY,
Clerk of the Circuit Court of the United States,
For the Sixth Circuit, South Carolina District.

Filed, 19th day of May, A. D. 1841, in my office.

H. Y. GRAY,
Clerk Cir. Ct.

SOUTH CAROLINA DISTRICT.

The President of the United States of America to R. F. Poe, greeting:

You are hereby cited and admonished, to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error, filed in the Clerk's office of the Circuit Court of the United States, for the Sixth Circuit, in South Carolina District, to hear the

record and proceedings, on appeal, in the suit between yourself and R. Barnwell Rhett, and to answer the same.

Witness my hand, at Charleston, this nineteenth day of May, in the year of our Lord one thousand eight hundred and forty-one.

R. B. GILCHRIST,
Judge of the United States, for the District of South Carolina.

R. F. Poe, a citizen of Georgia,
vs.
R. Barnwell Rhett, citizen of So. Ca.

In the Circuit of the United States, for the Sixth Circuit, in South Carolina District.

I acknowledge service of the writ of error sued out by R. Barnwell Rhett, defendant in the above entitled cause, to reverse the judgment rendered against him, in the said cause, by the Circuit Court of the United States, for the District of South Carolina, upon which a citation had been regularly allowed and issued; which writ is returnable to the next term of the Supreme Court of the United States.

M. KING, *Plff's. A'tty.*

21st May, 1841.

District of South Carolina, *sct.*
Clerk's Office, Charleston, December ninth, 1841.

In obedience to the within writ, I herewith transmit to the Supreme Court of the United States, a full and complete transcript of the record and proceedings of the Circuit Court of the United States, for the District of South Carolina, in a certain suit therein determined in favour of Robert F. Poe, a citizen of the State of Georgia, plaintiff, against Robert Barnwell Rhett, lately called Robert Barnwell Smith, a citizen of the State of South Carolina, defendant.

H. Y. GRAY,
Clerk Cir. Ct. U. S. So. Ca. Dist.

The United States of America,
District of South Carolina, sct.

Robert F. Poe, a citizen of Georgia,
vs.
R. B. Rhett, a citizen of So. Carolina.

Be it remembered, that, heretofore, to wit, on the sixth day of September, in the year of our Lord one thousand eight hundred and thirty-seven, Robert F. Poe, a citizen of the State of Georgia,

by Messrs. King and Walker, his attorneys, sued out of the office of the Clerk of the Circuit Court of the United States, for the district aforesaid, a writ of capias ad respondendum, in an action of trespass, on the case, against Robert B. Rhett, lately called Robert Barnwell Smith, a citizen of the State of South Carolina, in tenor and form following, to wit:

Writ.

SOUTHERN CIRCUIT OF THE UNITED STATES OF AMERICA.

The President of the United States of America to the Marshal of the Federal Court, for South Carolina District, greeting:

You are hereby commanded, without delay, to attach the body of Robert Barnwell Rhett, lately called Robert Barnwell Smith, a citizen of the State of South Carolina, wheresoever he may be found, within the aforesaid district, so that you compel him to be and appear before the clerk of the said district of the United States of America, at rules, to be holden at Charleston, in the aforesaid district, on the first Monday in October next, to answer to Robert F. Poe, a citizen of the State of Georgia, Cashier of the President, Directors and Company of the Bank of Augusta, in a plea of trespass on the case, and so forth; and also, for certain promises and assumptions, by the said Robert Barnwell Smith, to the said Robert F. Poe made and not performed, to the damage of the said Robert F. Poe, sixteen thousand dollars; and have you then and there this writ.

Witness, the Honorable Roger B. Taney, Esquire, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the eleventh day of April, in the year of our Lord one thousand eight hundred and thirty-seven, and in the sixty-first year of the sovereignty and independence of the United States of America.

[L. S.]

JAMES JERVEY, *Dist. Cl'k.*

KING & WALKER,
Plaintiff's Attorneys.

Return.

And the marshal, to whom the same was directed, duly returned the said writ, with his return thereto, endorsed as follows:

I do hereby certify, to the honorable the Judges of the Circuit Court of the U. S., that the within named defendant was attending Congress, of which he is a member, at the time of issuing the within writ.

THO. D. CONDY, *U. S. M. S. C. D.*

And afterwards, to wit, on the twenty-second day of November, in the year of our Lord one thousand eight hundred and thirty-seven, the following writ of alias capias ad respondendum, issued out of the office of the Clerk of said Circuit Court, in tenor and form following, to wit:

Alias-writ.

SOUTHERN CIRCUIT OF THE UNITED STATES OF AMERICA.

The President of the United States of America to the Marshal of the Federal Court, for South Carolina District, greeting:

You are hereby commanded, without delay, as you have been before, to attach the body of Robert Barnwell Rhett, formerly called Robert Barnwell Smith, a citizen of the State of South Carolina, wheresoever he may be found, within the aforesaid district, so that you compel him to be and appear before the Clerk of the said District of the United States of America, at rules, to be holden at Charleston, in the aforesaid district, on the first Monday in December next, to answer to Robert F. Poe, a citizen of the State of Georgia, Cashier of the President, Directors and Company of the Bank of Augusta, in a plea of trespass on the case, and so forth; and also, for certain promises and assumptions, by the said Robert Barnwell Rhett to the said Robert F. Poe made and not performed, to the damage of the said Robert F. Poe, sixteen thousand dollars; and have you then and there this writ.

Witness, the Honorable Roger B. Taney, Esquire, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, [L. S.] the eleventh day of April, in the year of our Lord one thousand eight hundred and thirty-seven, and in the sixty-first year of the sovereignty and independence of the United States of America.

JAMES JERVEY, *Dist. Cl'k.*
KING & WALKER,
Plaintiff's Attorneys.

Return.

And the marshal, to whom the same was directed, duly returned the said writ, with his return thereto, endorsed as follows:

I do hereby certify, to the Hon. the Judges of the Circuit Court of the U. S., for So. Ca. Dist., that the within named defendant, at the time of issuing the within writ, was on his way to attend the meeting of the Congress of the U. S., of which he is a member.

THO. D. CONDY, *U. S. M. S. C. D.*

And afterwards, to wit, on the fifteenth day of August, in the year of our Lord one thousand eight hundred and thirty-eight, the following writ of alias capias ad respondendum, issued out of the office of the Clerk of said Circuit Court, in tenor and form following, to wit:

Alias-writ.

SOUTHERN CIRCUIT OF THE UNITED STATES OF AMERICA.

The President of the United States of America to the Marshal of the Federal Court, for South Carolina District, greeting:

You are hereby commanded, without delay, as you have often before been, to attach the body of Robert Barnwell Rhett, lately called Robert Barnwell Smith, a citizen of the State of South Carolina, wheresoever he may be found, within the aforesaid district, so that you compel him to be and appear before the Clerk of the said District of the United States of America, at rules, to be holden at Charleston, in the aforesaid district, on the first Monday of September next, to answer to Robert F. Poe, a citizen of the State of Georgia, Cashier of the President, Directors and Company of the Bank of Augusta, in a plea of trespass on the case, and so forth; and also, for certain promises and assumptions, by the said Robert Barnwell Rhett to the said Robert F. Poe made and not performed, to the damage of the said Robert F. Poe, sixteen thousand dollars; and have you then and there this writ.

Witness, the Honorable Roger B. Taney, Esquire, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, [L. S.] twenty-fifth day of April, in the year of our Lord one thousand eight hundred and thirty-eight, and in the sixty-second year of the sovereignty and independence of the United States of America.

JAMES JERVEY, *Dist. Cl'k.*
KING & WALKER,
Plaintiff's Attorneys.

I acknowledge the legal service of this writ.

R. BARNWELL RHETT.

20th August, 1838.

Return.

And the marshal, to whom the same was directed, duly returned the said writ, with his return thereto, endorsed as follows:

THE UNITED STATES OF AMERICA,
South Carolina District.

I do hereby certify, to the Hon. the Judges of the Circuit Court of the U. S., for So. Ca. District, that I have personally served the within named defendant with a true copy of the within writ.

THO. D. CONDY,
24th Aug., 1838. *U. S. M. S. C. D.*

And thereupon, afterwards, to wit, on the third day of September, in the year of our Lord one thousand eight hundred and thirty-eight, the said Robert F. Poe, the plaintiff, by his attorneys, filed in the office of the Clerk of said Circuit Court, his declaration against the said Robert Barnwell Rhett, the defendant, in the words and figures following, to wit:

Declaration.

THE SOUTHERN CIRCUIT OF THE UNITED STATES OF AMERICA.

Robert Barnwell Rhett, lately called Robert Barnwell Smith, a citizen of the State of South Carolina, was attached, to answer to Robert F. Poe, a citizen of the State of Georgia, in a plea of trespass upon the case, and so forth; and thereupon, the said Robert F. Poe, by King & Walker, his attorneys, complains, that, whereas one Benjamin R. Smith, heretofore, to wit, on or about the ninth day of May, in the year of our Lord one thousand eight hundred and thirty-seven, at Charleston, in the State of South Carolina, and circuit aforesaid, made his certain promissory note in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby, then and there promised to pay, sixty days after date thereof, to William E. Haskell, or order, the sum of eight thousand dollars, ($8,000,) for value received, and then and there delivered the said promissory note to the said William E. Haskell; and the said William E. Haskell, to whom, or to whose order, the said payment of the said sum of money in the said promissory note specified, was to be made, after the making of the said promissory note, and before the payment of the said sum of money therein specified, to wit, on the day and year aforesaid, at Charleston aforesaid, indorsed the said promissory note, by which said indorsement, he, the said William E. Haskell, did, then and there, order and appoint the said sum of money, in the said promissory note specified, to be paid to the said defendant, and then and there delivered the said promissory note, so indorsed, to the said defendant; and the said defendant then and there endorsed and delivered the said promissory note to the said plaintiff. And the said plaintiff avers, that afterwards, when the said promissory note became due and payable, according to the tenor and effect thereof, to wit, on the eleventh day of July, in the year

of our Lord one thousand eight hundred and thirty-seven, at Charleston aforesaid, the said note, so endorsed as aforesaid, was duly shown and presented for payment at Charleston aforesaid, and the said Benjamin R. Smith was then and there requested to pay the said sum of money in the said note specified, according to the tenor and effect of the said note, and the said endorsement thereon.

But the said Bejamin R. Smith, when the said note was presented and shown for payment, as aforesaid, nor at any time before or afterwards, nor any person for him, did not pay the said sum of money therein specified, nor any part thereof, but wholly neglected and refused so to do; of all of which, the said several premises the said defendant, afterwards, to wit, on the day and year last aforesaid, at Charleston aforesaid, had notice, by means whereof and by force of the statute in such case made and provided, the the said defendant then and there became liable to pay to the said plaintiff, the said sum of money on the said promissory note specified, when he, the said defendant, should be thereunto requested; and being so liable, he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at Charleston aforesaid, then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, when he, the said defendant, should thereunto be afterwards requested.

And whereas, afterwards, to wit, on the day and year aforesaid, at Charleston aforesaid, one Benjamin R. Smith made his certain promissory note, in writing, and thereby promised to pay one William E. Haskell, or order, the sum of eight thousand dollars, sixty days after date thereof, which period has now elapsed, and then and there delivered the said note to the said William E. Haskell; and the said William E. Haskell then and there indorsed the same to the defendant, and the defendant then and there endorsed the same to the plaintiff.

And when the said note became due and payable, due and diligent search was made for the said Benjamin R. Smith, and the said Benjamin R. Smith could not be found; and the said Benjamin R. Smith, or any person for him, then and there or at any time since, did not pay the said note or any part thereof, of all which several premises the said defendant then and there had notice, by means whereof and by force of the statute in such case made and provided, the said defendant then and there became liable to pay to the said plaintiff the said sum of money in the said note specified, when he, the said defendant, should be thereunto afterwards requested; and he, the said defendant, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at Charleston aforesaid, then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note specified, when he, the said defendant, should be thereunto afterwards requested.

And whereas, afterwards, to wit, on the day and year aforesaid, at Charleston aforesaid, the said defendant became indebted to the said plaintiff, in the full and just sum of eight thousand dollars, for money by the plaintiff before that time laid out and expended, and paid for the said defendant, at his special instance and request, and for other money before that time had and received by the said defendant to the use of the said plaintiff, and for other money before that time lent and advanced by the said plaintiff to the said defendant at his special instance and request; and being so indebted, the said defendant, on the day and year last aforesaid, at Charleston aforesaid, assumed upon himself, and to the said plaintiff then and there faithfully promised, that he, the said defendant, the said last mentioned sum of money would well and truly pay to the said plaintiff, whenever afterwards he, the said defendant, should be thereunto requested. Nevertheless, the said defendant, his said several promises and assumptions in this behalf made in no wise regarding, but contriving and fraudulently intending the said plaintiff in this behalf to deceive and defraud, the aforesaid sums of money, nor any part thereof, hath not paid, nor for the same in any manner satisfied; although so to do, he, the said defendant, afterwards, to wit, on the day and year last aforesaid, at Charleston aforesaid, was thereunto required by the said plaintiff, but the same to the said plaintiff to pay, or in any manner satisfy, hath altogether refused and still doth refuse. Wherefore, the said plaintiff says, that he is worse, and hath sustained damages to the value of sixteen thousand dollars, and therefore he brings suit, and so forth.

KING & WALKER, *Plff's Att'ys.*

And with the said declaration, the plaintiff filed a copy of the note sued on, which is in the words and figures following, to wit:

Note.

$8,000. *Charleston, May* 9, 1837.

Sixty days after date, I promise to pay to Wm. E. Haskell, or order, eight thousand dollars, for value received.

BENJ. R. SMITH.

Endorsed—Wm. E. Haskell, pr. att'y, B. R. Smith; R. Barnwell Smith, pr. att'y, B. R. Smith.

And afterwards, to wit, on the seventeenth day of October, in the year of our Lord one thousand eight hundred and thirty-eight, the said Robert Barnwell Rhett, by Messrs. Memminger & Jervey, his attorneys, appeared and filed his plea to the action aforesaid, in the words following, to wit:

Plea Non-assumpsit.

And the said R. B. Rhett, by Memminger & Jervey, his attorneys, comes and defends the wrong and injury, when, and so forth, and says, that he did not promise and assume in manner and form as the said plaintiff hath above thereof alleged against him, and of this he puts himself upon the country, and so forth.

MEMMINGER & JERVEY,
Defts. Att'ys.

And at the same time, the plaintiff, by his said attorneys, joined issue as follows:

Joinder of issue.

And the said plaintiff doth so likewise.

KING & WALKER, *Plff's Att'ys.*

17 October, 1838.

And afterwards, to wit, at the November term of said Circuit Court, in the year of our Lord one thousand eight hundred and thirty-eight, in the record of proceedings of said court, is the following entry:

ROBERT F. POE,
vs.
R. B. RHETT.

This case having been continued by the court on the motion of the defendant, ordered, on motion of Mr. King, plaintiff's attorney, that he have leave to amend the first count in the declaration.

Mis-trial.

And afterwards, to wit, at the April term of said Circuit Court, in the year of our Lord one thousand eight hundred and forty, at Charleston, before the Honorable Robert B. Gilchrist, one of the Judges of the said Circuit Court, the issue as aforesaid joined between the said parties, came on to be tried before a jury for that purpose empannelled, at which day came there as well the said plaintiffs, as the said defendant, by their attorneys aforesaid, and the jury empannelled as aforesaid being called, also came, to wit:

William Birnie, (Foreman,)	William Dunn,
J. J. Joseph,	E. E. Abrahams,
P. Patrick,	J. H. Seyle,
D. A. Ring,	J. A. Cook,
S. Lafiteau,	A. Lovegreen,
E. E. Pritchard and	John White.

Who were duly chosen and sworn to try the said issue; and the jury aforesaid not agreeing of their verdict, on the twenty-ninth day of April, in the year last aforesaid, were discharged; on which said day, in the record of proceedings of said court, is the following entry:

R. F. Poe,
vs.
R. B. Rhett.

The jury to whom this case was submitted, after having been confined several hours considering the same, communicated to the court, that there was no probabilty of their agreeing upon a verdict; their names being called, and all not answering, ordered, that they be discharged from the further consideration of this case.

Trial.

And afterwards, to wit, at the April term of the said Circuit Court, in the year of our Lord one thousand eight hundred and forty-one, at Charleston, before the Honorable James M. Wayne and the Honorable Robert B. Gilchrist, Judges of the said Circuit Court, came the parties aforesaid, by their respective attorneys aforesaid, and thereupon, also, came a jury to wit:

N. Hayden, (Foreman,)	W. G. Benson,
J. H. Steinmyer,	Whiteford Smith,
W. G. Mood,	John Winthrop,
H. H. Williams,	C. A. De Saussure,
John Strobel,	Isaac Mordecai,
Charles Kanapaux and	Carsten Neebeck.

Twelve good and lawful men, who were duly chosen and sworn to try the issue so as aforesaid joined between the said parties; and the counsel, learned in the law, for the said plaintiff in this suit, to maintain and prove the said issue, on his part, produced in evidence note sued on, a copy of which is filed with the declaration as aforesaid, and is in the words and figures following, to wit:

$,8000. *Charleston, May* 9, 1837.

Sixty days after date, I promise to pay to Wm. E. Haskell, or order, eight thousand dollars, for value received.

BENJ. R. SMITH.

(Endorsed)—Wm. E. Haskell, pr. att'y, Benj. R. Smith; R. Barnwell Smith, pr. att'y, Benj. R. Smith.

At the bottom of the said note, there is a memorandum written with pencil, in the words following, to wit: this note is collateral security for the payment of the annexed draft of D. Timberlake's on B. R. Smith, for $8,000.

J. ADGER.

And the said plaintiff, further to maintain the said issue, on his part, called the following witnesses, who testified as follows, that is to say:

William E. Hayne.

William E. Hayne (a notary public) testified, that on the day the aforesaid note became payable, he demanded payment of the same at the store of Mr. B. R. Smith, the maker thereof, and that Mr. Smith being absent at the time, the note was presented to his clerk for payment; that he then left at that place letters for Mr. Wm. E. Haskell, and the defendant, Mr. Rhett, the endorsers on the said note, advising them of the non-payment thereof by Mr. Smith, the maker, and transmitted letters to them by mail, containing the same information as to the non-payment of the note; that the letters transmitted by mail, he is under the impression were so sent to the said endorsers, on the evening of the day on which the demand for payment of the note was made, and that it certainly was not later than the next morning when they were thus transmitted.

A draft and protest thereon were then produced in evidence, which said draft and protest are in the words and figures following, to wit:

$8,000. *Augusta, May* 6, 1837.

Sixty days after sight, pay to the order of Robert F. Poe, Esq., Cashier, eight thousand dollars, value received, which charge as advised, to ac't.

Your ob't servant,
D. TIMBERLAKE.

To Benj. R. Smith, Esq., Charleston, S. C.

Accepted, May 9th, 1837. BENJ. R. SMITH.

(Endorsed)—Pay to A. Moise, Jr. Esq., Ass't Cashier, or order.
Cashier.

Protest.

State of South Carolina, *City of Charleston:*

On this day, the eleventh of July, anno Domini, one thousand eight hundred and thirty-seven, and in the sixty-second year of the

independence of the United States of America, at the request of the Bank of Charleston, So. Ca.

I, William Edward Hayne, Justice of the quorum and notary public, by lawful authority duly sworn, admitted and commissioned by letters patent under the seal of said State, residing and practising in the city of Charleston and State aforesaid, did exhibit the original bill or draft, whereof a true copy is on the other side written, at the store of Benj. R. Smith, who being absent, I delivered to his clerk a letter demanding payment; he answered, that there were no funds for paying the same. I then put into the post-office a letter addressed to Robert F. Poe, Esq., Cashier of the Bank of Augusta, Georgia, inclosing another letter for D. Timberlake, notifying them respectively of the non-payment of the said bill or draft.

Therefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly and publicly protest against the drawer of the said bill or draft, acceptor, endorser or endorsers, and against all others whom it may concern, for exchange, re-exchanges, and all costs, charges, damages and interests suffered or sustained, or to be suffered or sustained for want of payment of the said bill or draft. Thus done and protested at Charleston aforesaid, the day and year above written.

[L. S.] In testimonium veritatis,
WM. ED. HAYNE, *Q. U. & Notary Public.*

(Endorsed on the protest.)

$8,000. *Augusta, May 6th,* 1837.

Sixty days after sight, pay to the order of Robert F. Poe, Esq., Cashier, eight thousand dollars, value received, which charge as advised, to

Your ob't servant,
D. TIMBERLAKE.

To Benj. R. Smith, Esq., Charleston, S. C.

Accepted, May 9th, 1837. BENJ. R. SMITH.

(Endorsed)—Pay to A. Moise, Jr., Esq., Ass't Cashier, or order.
ROBERT F. POE, *Cashier.*

And this witness then testified, on his cross-examination, that the said protest contains a correct statement of facts, and that notices of non-payment of the said draft were transmitted as mentioned in the protest; that he enclosed the notice for D. Timberlake in a letter addressed to Robert F. Poe, Cashier of the Bank of Au-

gusta, and did not himself give any other notice to Timberlake; that it is the custom or usage of business in all cases where drafts or notes are sent by banks from abroad for collection, that in protesting them, the notices for the endorsers or *or* drawers in foreign places are transmitted to such banks.

On his examination in reply, he testified, that he did not know at the time when he protested the aforesaid draft, where D. Timberlake was to be found; that he had heard, that Timberlake had resided and done business in Augusta—was then told, that he had left that place; that he had made enquiries for Timberlake, and was then told that he had left Augusta, and it was not known where he had gone to.

George M. Thew (discount clerk of the Bank of Augusta) testified, that the letters connected with the discount department of the Bank are always brought to the discount clerk, open; that it is his duty to make diligent search for the parties for whom notices are sent, and if they are in Augusta, the notices are delivered to them personally; if they are at a distance the notices are transmitted to them through the post-office; that he, the witness, was in Augusta on the 12th July, 1837, about the time that the aforementioned note and draft became due, and if the letter from Mr. Hayne had been received, the notice enclosed therein would have been delivered to the witness, and he would have served it on Timberlake, if he (Timberlake) had been in Augusta; that the said draft for $8,000 was substituted for two other drafts with the same parties thereon, one of which was for $5,000 and the other for $3,000; that Timberlake was a speculator in cotton and stocks, and the witness does not know where he came from; that Timberlake had no permanent residence in Augusta, in the years 1836 and 1837; he lived in a boarding house, and got credit in bank from guarantees; Mr. B. R. Smith was one of Timberlake's guarantees. The witness received interest from Timberlake, which he thinks must have been on the $8,000 draft.

The "credit ledger, No 10," and "the foreign discount book No. 1," of the Bank of Augusta, were then produced in evidence; the said books containing, among others, accounts which are in the words and figures following, to wit:

Extract from Credit Ledger No. 10, of Bank of Augusta, at page 552.

B. R. Smith, Charleston.

1837.							
Feb'y. 14,	D. Timberlake, - - - - -	130	5,000		May 16,	charged.
March 7,	do. - - - - - -	133	5,000		" 6,	substituted by 151.
" 8,	do. - - - - - -	134	3,000		" 7,	substituted by 151.
" 15,	do. - - - - - -	138	5,000		" 19,	charged.
" 21,	do. - - - - - -	144	3,500		" 25,	charged.
May 10,	do. - - - - - -	157	8,000		July 9,	charged.

D. Timberlake.

1837.						
Feb'y. 8,	Buchanan, Denneston & Co, N. Y., -	284		10,000	May 15,	charged.
" 9,	do. do. -	285		12,000	" 16,	charged.
	do. do. -	286		10,000	" 18,	charged.
" 14,	Wood, Johnston & Burnett, do. -	287		5,500	" 22,	charged.
	B. R. Smith, Char., - - -	130		5,000	" 16,	charged.
" 22,	Bayard & Hunter, Sav., - - -	143		1,000	March 24,	March 30.
March 3,	do. do. - - -	155		5,000	May 2,	charged.
" 4,	do. do. - - -	156		2,500	" 7,	charged.
	do. do. - - -	157		3,000	April 7,	April 15th.
" 7,	B. R. Smith, Char., - - -	133		5,000	May 6,	charged.
	do. do. - - - -	134		3,000	" 7,	charged.
" 10,	Bayard & Hunter, Sav., - - -	161		3,000	April 11,	April 17.
" 14,	B. R. Smith, Char., - - -	138		5,000	May 19,	charged.
" 21,	do. do. - - -	144		3,500	" 25,	charged.

On his cross-examination this witness testified, that Timberlake's account with the Bank of Augusta, commences in the month of February, 1837, and ends in the month of March, in the same year; that the credit book of the Bank of Augusta does not state the $8,000 draft; it does not shew that Timberlake was liable for that draft, because the account is not posted; the book contains two months' transactions with Timberlake; Mr. Timberlake was in Augusta the previous year; he, Timberlake, had had business with another Bank in Augusta, and transferred his business to the Bank of Augusta, where he had credits to the amount of about $100,000; that he, the witness, keeps no book in which he enters the notices sent to his bank; they are filed away with the Cashier, and the notices received at the bank for other parties are served, and a memorandum is made on the Cashier's notice of the delivery of them to those parties; that he has searched for the notice sent to the Cashier for Timberlake, and could not find it; that at that time Timberlake's paper was lying over, and that the discount paid by Timberlake on the $8,000 draft, is entered in the book of the bank produced in evidence.

On his examination in reply, this witness testified, that the draft for $8,000 was not posted, because it was an old transaction; that the book produced in evidence, is the book carried before the directors for new business, and that the aforesaid drafts for $5,000 and $3,000 are entered in the ledger of the bank.

Edward Henkell testified, that he is a book-keeper in the Bank of Augusta; that he thinks, that the $8,000 draft was substituted for the $5,000 and $3,000 drafts, at the request of Timberlake; Timberlake's credit was shaken at that time in Augusta; that the draft for $8,000 passed regularly through the books of the bank, charged in B. R. Smith's account. The transaction went through the hands of Mr. Adger, the agent of the bank in Charleston, and the entries in the books of the bank were made from Mr. Adger's report, and that the object of the credit ledger of the bank, is to show the board of directors the amount of a man's liabilities, when his note comes before them.

William Kain testified, that he was assistant cashier of the Bank of Augusta, in the month of July, 1837; that the representations made by Timberlake to the Bank of Augusta, were, that the said drafts were founded on cotton speculations, and it turned out afterwards that they were founded on stock speculations; that in July, 1837, at the maturity of the draft for $8000, Timberlake was totally insolvent; that the Bank of Augusta took Timberlake's drafts on the letters of credit in his favor; he had no personal credit; that Timberlake lived in Augusta, in the same house with him, (the witness,) and kept no office in that place; that Timberlake brought letters of credit from Mr. B. R. Smith; and the Bank of Augusta having no knowledge of Mr. B. R. Smith, made inquiries as to his means, which were deemed satisfactory; that Timberlake's drafts

on B. R. Smith were taken by the Bank of Augusta, on the letter of credit of Smith, in favor of Timberlake, and under the impression that they were founded on cotton speculations; that he (the witness) was present at a sale of stocks, when some stocks were knocked down to Timberlake, as the purchaser; that Timberlake had lost all credit with the Bank of Augusta; the directors of the Bank were willing to extend the time of payment of Timberlake's drafts; that he saw Timberlake at the White Sulphur Springs, in Virginia, when he (the witness) arrived there, which was on the last of July or the first of August, 1837, and when he left that place, which was on the 8th of August, in the same year.

On his cross-examination, this witness testified, that the Bank of Augusta accepted letters of credit in favor of Timberlake, from Buchanan, Dennistown & Co., for $50,000; from Wood & Johnson, for $5,000, and from B. R. Smith, for $20,000 or $30,000; that he has no evidence of Timberlake being an industrious man; that he does not know that Timberlake was industrious.

On his examination, in reply, this witness testified, that Timberlake was nothing more than a speculator; that the Bank of Augusta lost a good deal of money by Timberlake; that he saw Timberlake's drafts on Charleston and New York, after they had returned dishonored.

These drafts, and protests thereon, were then produced in evidence, which said drafts and protests are in the words and figures following, to wit:

(Draft No. 1.)

$5,000. *Augusta, Feb'y* 14, 1837.

Ninety days after sight, pay to the order of W. A. Kain, assistant cashier, five thousand dollars, value rec'd, which charge with or without advice, to

Yr. ob't serv't, D. TIMBERLAKE.

To Benj. R. Smith, Esq., Charleston, S. C.

Accepted Feb. 16, 1837. Benj. R. Smith.

(Endorsed on the draft.)

Pay A. Moise, Jr., Esq., ass't cashier, or order.

Ass't Cash'r.

Protest.

State of South Carolina,
City of Charleston.

On this day, the twentieth of May, anno Domini one thousand eight hundred and thirty-seven, and in the sixty-first year of the independence of the United States of America, at the request of the Bank of Charleston, So. Ca.,

I, William Edward Hayne, justice of the quorum and notary public, by lawful authority duly sworn, admitted and commis-

sioned by letters patent under the seal of the said State, residing and practising in the city of Charleston and State aforesaid, did exhibit the original bill or draft, whereof a true copy is on the other side written, to Benj. R. Smith, Esq., and demanded payment, which he refused, "because the drawer has failed to put him in funds, as pledged to do so; the draft being confidentially drawn on stock, which the drawer ought to have confidentially in his possession, and which, when he assigns to the bank or to the acceptor, the acceptor will be ready to meet the draft." I then put into the post office a letter for D. Timberlake & Co., and one for W. A. Kain, Esq., ass't cashier, Augusta, Geo., inclosing a duplicate for D. Timberlake & Co., notifying them of the non-payment thereof.

Therefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly and publicly protest against the drawer of the said bill or draft, acceptor, endorser or endorsers, and against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages and interests suffered or sustained, or to be suffered or sustained for want of payment of the said bill or draft.

Thus done and protested, at Charleston aforesaid, the day [L. S.] and year above written. In testimonium veritatis.

WM. ED. HAYNE,
Q. U. and Notary Public.

(Endorsed on the protest.)

$5,000. *Augusta, Feb'y 14th*, 1837.

Ninety days after sight, pay to the order of W. A. Kain, assistant cashier, five thousand dollars, value received, which charge with or without advice, to

Yr. ob't serv't, D. TIMBERLAKE & CO.

To BENJ. R. SMITH, Esq., Charleston, S. C.

Accepted Feb. 16, 1837. BENJ. R. SMITH.

Endorsed:

Pay A. Moise, Jr., Esq., ass't cashier, or order.

WILLIAM A. KAIN,
Ass't Cashier.

(Draft No. 2.)

$5,000. *Augusta, March 18th*, 1837.

Sixty days after sight, pay to the order of Wm. A. Kain, assistant cashier, five thousand dollars, value received, which charge with or without advice, to

Your ob't serv't, D. TIMBERLAKE.

To Mr. BENJ'N R. SMITH, Charleston, S. C.

Accepted March 21, 1837. BENJ. R. SMITH.

Endorsed on the draft:

Pay A. Moise, Jr., Esq., ass't cashier, or order.

Ass't Cash'r.

Protest.

STATE OF SOUTH CAROLINA,
City of Charleston.

On this day, the twenty-third of May, anno Domini one thousand eight hundred and thirty-seven, and in the sixty-first year of the independence of the United States of America, at the request of the Bank of Charleston, So. Ca.,

I, William Edward Hayne, justice of the quorum and notary public, by lawful authority duly sworn, admitted and commissioned by letters patent under the seal of the said State, residing and practising in the city of Charleston and State aforesaid, did exhibit the original bill or draft, whereof a true copy is on the other side written, to George Dener, clerk and attorney of Benj. R. Smith, and demanded payment; he answered, that B. R. Smith had left the city, and had directed him to say, that payment of said bill was refused, because the drawer has failed to put him in funds, as pledged to do so; the draft being confidentially drawn on stocks, which the drawer ought to have confidentially in his possession, and which, when he assigns to the bank or to the acceptor, the acceptor will be ready to meet the draft. I then put into the post office a letter addressed to D. Timberlake & Co., Augusta, Geo., and another to Wm. A. Kain, Esq., ass't cash'r of the Bank of Augusta, Georgia, inclosing a duplicate letter for D. Timberlake & Co., notifying them respectively of the non-payment of said bill or draft.

Therefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly and publicly protest against the drawer of the said bill or draft, acceptor, endorser or endorsers, and against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages and interests suffered or sustained, or to be suffered or sustained for want of payment of the said bill or draft.

Thus done and protested, at Charleston aforesaid, the day
[L. S.] and year above written. In testimonium veritatis.

WM. ED. HAYNE,
Q. U. and Notary Public.

Endorsed on the protest:

$5,000. *Augusta, March* 18, 1837.

Sixty days after sight, pay to the order of Wm. A. Kain, assistant cashier, five thousand dollars, value received, which charge with or without advice, to

Yr. ob't serv't, D. TIMBERLAKE & Co.

To Mr. BENJ. R. SMITH, Charleston, S. C.

Accepted March 21, 1837. BENJ. R. SMITH.

Endorsed:

Pay A. Moise, Jr., Esq., ass't cashier, or order.

WILLIAM A. KAIN,
Ass't Cash'r.

(Draft No. 3.)

$3,500. *Augusta, March 21st*, 1837.

Sixty days after sight, pay to the order of Wm. A. Kain, Esq., assistant cashier, thirty-five hundred dollars, value rec'd, which charge with or without advice, to

Yr. ob't serv't, D. TIMBERLAKE.

To BENJ. R. SMITH, Esq., Charleston, S. C.

Accepted March 25, 1837. BENJ. R. SMITH.

Endorsed on the draft:

Pay A. Moise, Jr., Esq., ass't cashier, or order.

Ass't Cash'r.

Protest.

STATE OF SOUTH CAROLINA,
City of Charleston.

On this day, the twenty-seventh of May, anno Domini one thousand eight hundred and thirty-seven, and in the sixty-first year of the independence of the United States of America, at the request of the Bank of Charleston, So. Ca.,

I, William Edward Hayne, justice of the quorum and notary public, by lawful authority duly sworn, admitted and commissioned by letters patent under the seal of the said State, residing and practising in the city of Charleston and State aforesaid, did exhibit the original bill or draft, whereof a true copy is on the other side written, to Benj. R. Smith, and demanded payment, which he refused, saying he was not in funds on account of the drawers. I then put into the post office a letter addressed to D. Timberlake & Co., and one to William A. Kain, ass't cashier, Augusta, Georgia, inclosing a duplicate letter for said D. Timberlake & Co., notifying them respectively of the non-payment of the said bill or draft.

Therefore, I, the said notary, at the request aforesaid, have protested, and by these presents do solemnly and publicly protest against the drawer of the said bill or draft, acceptor, endorser or endorsers, and against all others whom it may concern, for exchange, re-exchange, and all costs, charges, damages and interests, suffered or sustained, or to be suffered or sustained for want of payment of the said bill or draft.

Thus done and protested, at Charleston aforesaid, the day
[L. s.] and year above written. In testimonium veritatis.

WM. ED. HAYNE,
Q. U. and Notary Public.

Endorsed on the protest:

$3,500. *Augusta, March 21st*, 1837.

Sixty days after sight, pay to the order of Wm. A. Kain, Esq.,

assistant cashier, thirty-five hundred dollars, value received, which charge with or without advice, to

Yr. ob't serv't, D. TIMBERLAKE & Co.

To BENJ. R. SMITH, Esq., Charleston, S. C.

Accepted March 25, 1837. BENJ. R. SMITH.

Endorsed:

Pay A. Moise, Jr., Esq., ass't cash'r, or order.

WILLIAM A. KAIN,
Ass't Cash'r.

On the examination of this witness by the court, he stated that he left Augusta for the Springs, on the 22d June, 1837, and then left Timberlake in Augusta; that he has no knowledge that Timberlake was in Augusta when the draft and note for $8,000, each, became payable.

And the said plaintiff, further to maintain the said issue, on his part, produced and read in evidence the depositions of witnesses, with the documents annexed to the same, which said depositions and documents are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Georgia.

Be it remembered, that on this the twentieth day of May, in the year of our Lord eighteen hundred and thirty-nine, Robert F. Poe, of the city of Augusta, in the district aforesaid, personally appeared before me, Benjn. H. Warren, one of the justices of the inferior court of the county of Richmond, in the State of Georgia, and made oath that he is plaintiff in a certain action of assumpsit, pending in the Circuit Court of the United States in and for the District of South Carolina, wherein one Robert B. Rhett is defendant; and that the testimony of William T. Gould, David W. St. John, and Thomas J. Parmlee, is material and necessary for him, the said Robert F. Poe, and that they, the said William T., David W., and Thomas J., live at Augusta, Georgia, more than one hundred miles from Charleston, in South Carolina, where the court in which the said Robert F. expects the said case will be tried, is appointed by law to be held, and that he is informed and believes that the said Robert B. Rhett, the above named defendant, resides at or near Beaufort, in So. Carolina, about one hundred and twenty-five miles from the said city of Augusta, where the examination of the said witnesses is to be had; and that he is also informed and believes that Messrs. Memminger & Jervey, the attorneys of the said Robert B. Rhett, reside at Charleston, South Carolina, about one hundred and thirty miles from the city of Augusta aforesaid. And the said Robert F. Poe having requested me that the said witnesses

should be examined in said case, according to the provisions of the act of Congress in such case made and provided:

Whereupon, I, the said Benj. H. Warren, one of the justices of the inferior court of Richmond County, in the State of Georgia as aforesaid, ordered that the said witnesses should be examined before me, this day, at the office of Henry H. Cumming, in the city of Augusta, in the State of Georgia; and the said witnesses having appeared before me, agreeably to the said order, I have proceeded with the said examination; and the said witnesses having been severally carefully examined and cautioned, and duly sworn to testify to the truth and the whole truth, and nothing but the truth, depose and say, as in their respective depositions hereto annexed.

In the Sixth Circuit Court of the United States for the District of South Carolina.

ROBERT F. POE, *vs.* ROBERT B. RHETT. } Assumpsit.

Depositions of Thomas J. Parmlee.

Thomas J. Parmlee, one of the said witnesses, being duly cautioned, examined and sworn as aforesaid, deposeth and says:

That he is personally acquainted with the plaintiff, Robert F. Poe, but does not personally know the defendant, Robert B. Rhett; that he was well acquainted with Dixon Timberlake, during his residence in the city of Augusta, in the State of Georgia; that he does not, of his own knowledge, know that the said Dixon Timberlake was insolvent, but he was generally so reputed during the months of April and May, in the year eighteen hundred and thirty-seven, down to the time when he left the said city of Augusta, on the evening of the last day of June, in that year, since which time he has known nothing of said Timberlake's affairs.

That he, the said Dixon Timberlake, left the city of Augusta, in company with the deponent, on the thirtieth day of June, eighteen hundred and thirty-seven, and has not since returned. The deponent parted with him in Richmond, Virginia, about the sixth day of July, eighteen hundred and thirty-seven.

The deponent does not believe that the said Timberlake left any agent or attorney in Augusta, and thinks that had he done so, the deponent would have known it.

THOMAS J. PARMLEE.

Sworn to and subscribed, before me, this the twentieth day of May, 1839.

B. H. WARREN,
J. I. C., R. C.

In the Sixth Circuit Court of the United States for the District of South Carolina.

ROBERT F. POE,
vs.
ROBERT B. RHETT. } Assumpsit.

Depositions of William T. Gould.

William Tracy Gould, of the City of Augusta, in the State of Georgia, of lawful age, deposes and says, being duly sworn, that deponent is secretary of the Georgia Insurance and Trust Company, and has been so ever since the institution was organized, in April, 1836.

Deponent further says, that on the twentieth of January, 1837, the capital stock of said company, in pursuance of its charter, was increased by a sale of five thousand shares at public auction: at which time Dixon Timberlake became the purchaser of three hundred shares, at a premium of thirty-six dollars and fifty cents a share. Said Timberlake never held any other stock in said company. On the twenty-first on January, he paid in said stock ten dollars per share, and received a certificate, a blank form of which, containing the terms of the purchase, is hereto annexed, marked (A).

The first moiety of the premium was paid by Mr. Timberlake; and no other payment has ever been made on said stock by him, or any one else. On the 22d of March, 1837, the company discounted said Timberlake's draft on Buchanan, Dennistown & Co., of New York, at seventy days from date, for five thousand six hundred and twenty-one dollars and ninety-one cents: the nett proceeds of which was equal to the remaining moiety of the premium on the sale of said stock. This draft was taken, not as *payment* for said premium, but with the express understanding and agreement that it was to be credited as such, *if paid at maturity*; and the stock to remain subject to that lien. Accordingly, no credit was entered on the certificate of stock (as was always done when payments were actually made) for any premium received. The original certificate is now before deponent, having been given up and cancelled at the time of the transfer hereinafter mentioned.

In April, after the sale above referred to, in consequence of the pressure in the money market, the time for paying the instalments on the new stock was extended, and Mr. Timberlake, with many others, gave his notes for fifteen per cent. of the stock, payable on the twenty-first of October, and twenty-five per cent. payable on the twenty-first of January following, with interest from the day of sale.

The blank form of said notes is annexed, marked (B). These notes are still lying over, no part being ever paid.

On the eighth of May following, Mr. Timberlake, in order, as he informed deponent, to save the stock in case of difficulty, transferred the whole to Francis M. Robertson, who, on the 24th of the same month, transferred it, at said Timberlake's request, to Benjamin R. Smith, of Charleston, who has never held any other stock of this company. But these transfers were on the regular transfer book, and contained the express condition, that the stock was subject to the payment of all the remaining instalments, and also to the payment of the draft above mentioned for the second moiety of the premium, which had not yet matured. This condition was endorsed on the certificate of stock issued to Mr. Smith. The stock still stands in Mr. Smith's name, and has never been transferred to any other holder, nor can it be transferred, except on the books of the company. It remains subject to the payment of the ninety per cent., with interest from the day of sale, and of the draft above referred to, with interest and expenses.

It has never been declared forfeited, according to the conditions of the sale, from an indisposition to press the holder; and in as much as if all the stock sold, none other is in this situation.

Since the purchase of this stock, the company has declared the following dividends: four dollars per share, payable sixth of January, 1838; six dollars per share, on the second day of July, 1838, and four dollars per share on the tenth of January, 1839.

The plaintiff in this action has not, and never had any interest in this stock, or any part of it, recognized by the company, nor has the bank of Augusta; and this deponent has never had any knowledge personally, or officially, of any such interest; nor of any transfer whatever by Mr. Smith, except that the latter gentleman on one occasion informed deponent, he had "indorsed over the scrip to Timberlake," or language to that effect: deponent replied to this, that the company would recognize no such transfer, and knew no person but Mr. Smith as interested in the stock.

Deponent has always been acquainted with the market value of the stock of said company, and has never known a time, since the transfer to Mr. Smith, when a sale would have realized the amount due upon it, with the interest, even allowing credit for the dividends and interest thereon. And further this deponent saith not.

WM. T. GOULD.

Sworn to and subscribed before me, this 20th day of May, 1839.
B. J. WARREN, *J. I. C. R. C.*

A.

Georgia Insurance and Trust Company.

No. *Augusta, January* 21, 1837.

———— ha paid ten dollars per share on

shares of the additional capital stock of this company, to which number of shares will be entitled: Provided the balance of said stock, and the premium on the purchase, be paid in pursuance of the terms of sale, on the 20th instant, viz:

One half the premium in thirty days from date.
One half the premium in sixty days from date.
Fifteen dollars per share in ninety days from date.
Twenty-five dollars per share in six months from date.
Twenty-five dollars per share in nine months from date.
Twenty-five dollars per share in twelve months from date.

With interest on all said payments, at eight per cent. per annum, from date, which interest may be stopped at any time, by paying up the amount. And in default of any of said payments, the right to the stock, and all previous payments, are to be forfeited.

Secretary.

(Endorsed)
Exhibit A, referred to by the witness, W. T. Gould.
B. H. WARREN, *J. I. C. R.*

20th May, 1839.

B.

$_____ *Augusta, April* 21, 1837.

On or before the twenty-first of October next, without grace, promise to pay to the order of William T. Gould, secretary of the Georgia Insurance and Trust Company, at the Mechanics' Bank, dollars (with interest from the twenty-first of January last, till paid) being fifteen per cent. on shares of the new stock of said company, now standing in name.
No.

$_____ *Augusta, April* 21, 1837.

On or before the twenty-first day of January next, without grace, promise to pay to the order of William T. Gould, secretary of the Georgia Insurance and Trust Company, at the Mechanics' Bank, dollars (with interest from the twenty-first of January last, till paid) being twenty-five per cent. on shares of new stock of said company, now standing in name.

No.

(Endorsed)
Exhibit B, referred to by the witness, W. T. Gould.
B. H. WARREN, *J. I. C. R. C.*

20th May, 1839.

In the sixth Circuit Court of the United States for the District of South Carolina.

ROBERT F. POE, *vs.* ROBERT B. RHETT. } Assumpsit.

Depositions of David W. St. John.

David W. St. John, one of the above named witnesses, being duly cautioned, examined and sworn, as aforesaid, deposes and says, that he personally knows Robert F. Poe, the plaintiff, but is not personally acquainted with the defendant, Robert B. Rhett; that he was well acquainted with one Dixon Timberlake, while he resided in the city of Augusta, often conversed with him in relation to his affairs, and among other things in relation to bills drawn by him on Benjamin R. Smith, of Charleston, and that the said Dixon Timberlake told him, that his drafts drawn on the said Smith were for the accommodation of himself, the said Timberlake, he having no funds in the hands of the said Benjamin R. Smith.

That the said Dixon Timberlake repeatedly stated to him, that he was utterly insolvent. These statements were made about the month of May, 1837.

This deponent does not believe that the said Timberlake left any agent or attorney in Augusta, and that if he had done so, this deponent would have known it.

D. W. ST. JOHN.

Sworn and subscribed before me, this 20th May, 1837.
B. H. WARREN, *J. I. C. R. C.*

And I, the said Benjamin H. Warren, do hereby certify, that the preceding deposition of David W. St. John was reduced to writing by me; and those of the said Thos. J. Parmlee, and W. T. Gould, by them respectively, and by the witnesses signed in my presence; and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

B. H. WARREN,
J. I. C. R. C.

And the said plaintiff, further to maintain the said issue on his part, then called, as a witness, *James Adger*, who testified, that Mr. Poe, the plaintiff, wrote to him, stating that Mr. B. R. Smith must pay the discount on the $8,000 draft; that Mr. Smith refused to make the required payment to him, (the witness,) alleging that as the bill was drawn for the benefit of Timberlake, the discount should be paid by Timberlake; that Mr. Smith stated to him, that he

could do nothing as to a compromise of the three drafts, amounting to $13,500, because Timberlake had not given to him, (Smith,) the stocks which he had promised; that the bank of Charleston had never compromised with Mr. Rhett, and had obtained judgment against him for the whole amount of their claim.

That Mr. Rhett had since made payments on account of his debt to the bank of Charleston, and that the bank of Charleston had granted him indulgence; that he (the witness,) considers that debt perfectly good.

And then the counsel, learned in the law, of the said defendant, to maintain and prove the said issue on his part, produced and read in evidence the depositions of Dixon Timberlake, the same having been taken under two commissions issued for his examination as a witness in this case; which said depositions are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
South Carolina District.

RHETT, *ads.* POE.

Interrogatories to be administered to D. Timberlake, a witness to be produced, examined and sworn on the part and behalf of the defendant.

1. Do you, or not, know of a bill of exchange drawn by D. Timberlake on Benj. R. Smith, of Charleston, dated on or about 6th May, 1837, in favor of the plaintiff, for eight thousand dollars, or thereabouts? If yea, declare whether you were the drawer of the said bill, and whether the copy upon the annexed protest is a true copy thereof?*

2. Was, or was not, the said bill delivered by you to R. F. Poe, the payee thereof, or to some other, and what person? and was, or was not, the same presented to, and accepted by the said Benj. R. Smith?

3. Has, or has not, the said bill been paid, or was any demand made upon you to pay the same at the maturity thereof; or has, or has not, any notice of non-payment been served upon you, or received by you? and if yea, then say, where and at what time the said notice was served or received.

4. At the date and maturity of the said bill, that is to say, for sixty days after the 6th May, 1837, where did you reside? had you any place of business other than your residence; and must you,

* *Note*—for copy of protest and draft here referred to, see copy of protest and draft, ante pages 18 and 19.

or not, have duly received any notice, if the same had been left for you?

5. Did you reside at Augusta on the 11th July, 1837, or at any time thereabouts? If not, where did you reside, and have you any, and what reason, to believe, that your place of residence was known to Robert F. Poe, or to the officers of the bank of Augusta, or that no notice was ever served upon you?

6. Do you know of any other matter or thing, important to the defence of the defendant? If yea, declare the same.

MEMMINGER & JERVEY,
Deft's. Att'ys.

To Commissioners for Defendant at New York,
WM. J. BUNKER,
SAML. MARSH,
THOMAS MARIAN.

Cross interrogatories to be submitted to D. Timberlake, on part of plaintiff.

1. If, in answer to the first direct interrogatory, you say you were the drawer of the bill of exchange therein referred to, was said bill drawn on funds belonging to you in the hands of Benjamin R. Smith, or was the acceptance of the said Smith merely for your accommodation? If you had, at the time said bill was drawn, any funds whatever in the hands of said Smith, what, or about what was the amount?

2. If, in answer to any of the direct interrogatories, you say you did not receive due notice of the non-payment of the bill of exchange referred to, have you not waived, and do you not now waive any and all advantages you might otherwise have had by the failure to notify you of such non-payment? Was or was not such the understanding between all the parties to the said bill?

3. Were you or not, in fact, in the city of Augusta on the 11th July, 1837? If nay, how long before had you left Augusta? To what place did you go? where were you at that date? Did you notify the plaintiff where you would be at that date? When you left Augusta, did you leave any agent or attorney to attend to your business, whilst absent?

4. What was your pecuniary situation at the time of the non-payment of the said bill of exchange? Were you then, or have you since been able to pay it or any part of it?

5. Do you know any other matter or thing, which may be of benefit to the plaintiff, who sues the defendant on a paper held as collateral security, and who resists payment on the ground that you, as drawer of the bill, have been discharged by want of notice?

If yea, please state all you know as fully and particularly as if specially interrogated thereto.

KING & WALKER, *Pl'ffs Att'y.*

8th Feb'y, 1839.

Commissioners same as defendant's.

Depositions of D. Timberlake, the witness sworn and examined on the part of the defendant.

Answer to 1st interrogatory.

On or about the 6th May, 1837, at Augusta, I did draw a bill of exchange in favor of R. F. Poe, for eight thousand dollars on Benj. R. Smith, of Charleston, and I believe the copy on the protest annexed is a true copy thereof.

Answer to 2d interrogatory.

The said bill of eight thousand dollars was not delivered to Rob. F. Poe, but inclosed to the said Smith—I do not know that he accepted it.

Answer to 3d interrogatory.

I was not aware the said bill had not been paid, till some time in the autumn of 1838, when Rob. Barnwell Rhett informed me he had been sued by the Bank of Augusta, as surety for the payment of the same. No demand was made upon me for the payment of said bill at maturity, nor since. No notice of non-payment of said bill has ever been served upon me or received by me.

Answer to 4th interrogatory.

From 6th May, 1837, to about 30th June following, I resided at Augusta—from about 30th June to about 4th July, I was travelling from Augusta to Virginia. After leaving Augusta, I had no place of business, but had any communication for me been left at the Augusta post office, I think I should have rec'd the same, having, on or about the 30th June, requested the Post Master, by note, to forward my letters, &c.

Answer to 5th interrogatory.

I did not reside at Augusta on 11th July, 1837, having left that place on or about 30th June preceding. I was in Virginia on 11th July, 1837, and I believe about that time at Richmond. I have no reason to believe that my place of residence on 11th July was known to Rob. F. Poe, or to any other officer of the bank of Augusta, or that no notice was served upon me.

Answer to 6th interrogatory.

I do not.

D. TIMBERLAKE.

New York, March 29, 1839.

New York, *March* 29, 1839.

Examined and sworn before us,

W. J. BUNKER, [L. S.]
SAMUEL MARSH, [L. S.]
THOMAS MARIAN, [L. S.]
Commissioners.

Depositions of D. Timberlake, the witness sworn and examined on the part of the plaintiff.

Answer to 1st cross-interrogatory.

The said bill for eight thousand dollars was not drawn for my accommodation, it being for the purpose of renewing my two bills of $5,000, and $3,000, drawn on Benj. R. Smith, (say eight thousand dollars,) which fell due at Charleston, on or about 8th May, 1837.

Answer to 2nd interrogatory.

I did not and do not waive any advantages whatsoever. There was no such understanding between any of the parties, to my knowledge.

Answer to 3d interrogatory.

I was not in Augusta on 11th July, 1837; I left that place on or about 30th June, for Virginia, and on or about 11th July, I believe I was at Richmond. I did not notify the plaintiff where I should be on 11th July, 1837. I did not leave any agent or attorney at Augusta, having no business to be attended to.

Answer to 4th interrogatory.

I think the answer to the previous interrogatories, and cross-interrogatories, render an answer to this question irrelevant, and I therefore decline answering the same.

Answer to 5th interrogatory.

It may be proper to state, that the two bills before referred to, one of $5,000, and the other $3,000, (of which the bill for $8,000 was intended to be a renewal,) were drawn against property purchased on joint account, with the said Benj. R. Smith, enough of which property and funds, which I authorized him to draw for, (and he did draw for them, and rec'd the money,) were in his hands before the maturity of said bill of eight thousand dollars; consequently, the renewal was made for his accommodation, not mine—for the said Smith subsequently sent me a sketch of my ac., in which he charged to me all my bills which he had paid, including the said two bills of $5,000 and $3,000, *as if they had been paid*; and said ac. shows a balance in my favor.

D. TIMBERLAKE.

New York, March 29, 1839.

New York, *March* 29, 1839.

Examined and sworn before us,

W. J. BUNKER, [L. S.]
SAMUEL MARSH, [L. S.]
THOMAS MARIAN, [L. S.]
Commissioners.

Commission.

UNITED STATES OF AMERICA, *South Carolina District:*

To John W. Mitchell, George F. Tallman, and R. J. Dillon, Esqrs., greeting:

Whereas, a certain cause is now depending in the Federal Circuit Court, for the district of South Carolina, between R. B. Rhett, of So. Carolina, defendant, and R. F. Poe, of the State of Georgia, plaintiff; and it being necessary to the investigation of the said cause, that certain persons resident in the State of New York should be examined on certain interrogatories: Now, know ye, that in confidence of your prudence, ability, and integrity, you are by these presents appointed, and full power and authority are given hereby to you, any two or more of you, diligently to examine all witnesses whatsoever, upon certain interrogatories to be exhibited to you, as well on the part of said defendant, as on the part of the said plaintiff, or either of them; and therefore you, any two or more of you, are hereby authorized and required, on certain days and at certain places, *or* to be appointed by you for that purpose, to cause the said witnesses to come before you, and then and there to examine each of them apart on the said interrogatories, on their respective corporal oaths, first taken before you, or any two or more of you, and to take such their examinations, and reduce them to writing on paper; and when you shall have so taken them, to send the same to the Judge of the said Federal Circuit Court, closed up, and under your seals distinctly and plainly set, together with the said interrogatories and this writ: And you, and every of you, are hereby further required, that before you act in, or be present at the swearing or examining of any witness or witnesses, you do severally take the oath first specified in the schedule hereunto annexed; and you, any two or one of you, are hereby authorized and empowered, jointly or severally, to administer such oath to the rest, or any other of you. And you are hereby further authorized and required, jointly and separately, to administer the oath last specified in the said schedule hereunto annexed, to all and every of the clerks or clerk employed in taking, transcribing, or engrossing the deposition or depositions of witnesses so examined, by virtue of these presents, before they or he shall be permitted to act as clerks or clerk, or be present at such examination.

Witness the Hon. Roger B. Taney, chief justice of the U. S. A., fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, and in the sixty-fifth year of the sovereignty and Independence of the United States of America.

[L. S.]

H. Y. GRAY, *Cl'k Cir. Ct.*

Commissioners' Oath.

You shall, according to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you; and you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all or any of the depositions of the witnesses, or any of them, to be taken by you and the other commissioners, in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the said Fed'l Circuit Court. So help you God.

ROB. J. DILLON,
GEO. F. TALLMAN,
JOHN W. MITCHELL.

The oath administered each unto the other, respectively.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, and write down, transcribe, and engross, the depositions of all and every witness and witnesses produced before, and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them to take, and write down, and engross the said depositions or any of them; and you shall not publish, disclose, or make known to any person or persons whatsoever, the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed or engrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the said court. So help you God.

Instructions for the Commissioners.

The commissioners must first attend to the instructions contained in the commission; after which, when they are proceeding to business, they will put the first interrogatory to the first witness pro-

duced, and set down his answer thereto on a sheet entitled "Depositions of witnesses sworn and examined," &c. &c. When done with this, they will put the second interrogatory, and set down his answer to that also, and so on, till they have finished the interrogatories to him. They will then proceed to examine such other witnesses as may be produced; in which case, they will entitle their depositions in the same manner as those of the first, with the difference of the parties' name, age, &c. &c. They will then fix and seal the several sheets together, and set their hands and seals at the bottom of the whole, and their hands to each sheet, leaving the covering sheet on the outside of the whole; then enclose the whole, commission and all, in a large paper well sealed up with their seals, with their names affixed thereto; and having first endorsed the packet on a corner thereof, with the names of the parties, in the same manner as is done on the covering sheet of the depositions, direct the same to Henry Y. Gray, Esq., clerk of the Federal Court, Charleston, So. Ca.

N. B. Should the sheets annexed not be sufficient, the commissioners can easily tack others thereto, putting the covering sheet over the whole; and of the commissioners will be sufficient to take the examination.

(Endorsed on the commission.)

The execution of this commission appears in the schedules hereunto annexed.

JOHN W. MITCHELL, *Com'r*, [L. S.]
GEO. F. TALMAN, [L. S.]
ROB. J. DILLON. [L. S.]

R. B. Rhett, *ads.*
R. F. Poe, *Cashr.*

Interrogatories to be propounded to D. Timberlake, a witness residing in New York, and produced on the part of the defendant.

1. Were you, or not, engaged in business in Augusta, in May, 1837; what was the nature of your business; did it or did it not, involve large amounts of money? State as nearly as you can, the amount of credits it would require in one season.

2. Were you, or were you not, a resident of Augusta; did you, or did you not, visit Augusta merely for business purposes during the season? Were, or were not, your head-quarters at New York; did you, or did you not, go from New York during the cotton buying season at the South; and did you not usually return thither, after that season was over?

3. Was it, or was it not, known in Augusta that you came from

New York; was it known to the plaintiff, or the bank of Augusta; were, or were not, your principal letters of credit on New York? State as nearly as you can, the amount of credits on New York, which you were authorized to draw on at one time; did it, or did it not, reach nearly two hundred thousand dollars; and were, or were not, these letters from houses of the first standing; were, or were not, these letters or some, and if any, which of them, communicated or offered to, or accepted by the bank of Augusta? and did, or did not, these credits in your favor exist in the business season of 1837?

4. At what time did you leave Augusta in the summer of 1837; was, or was not, the manner of your leaving, open and public; do you, or not, remember at what time of day it was? if yea, declare; did you, or not, go openly in the stage; and was not your departure from a public tavern? were, or were not, some of the officers of the bank of Augusta passengers with you?

5. You state in your first examination, that when you left Augusta in the summer of 1837, you left instructions at the post-office there to forward your letters to a certain point; did you, or did you not, receive letters from Augusta, subsequent to your giving these instructions; did you, or did you not, receive such letters at the point mentioned in those instructions; and would you, or would you not, have received them at such point, if such instructions had not been left? Have you any, and what reason, to believe that no letter notifying you of the non-payment of your bill on B. R. Smith, dated 6th May, 1837, for $8000, at sixty days, was left at the post-office of Augusta; did you, or did you not, receive other letters from Augusta, forwarded thence in the summer of 1837; and is there any reason known to you, why a notice concerning this bill should not have been received, if put in the post-office at Augusta addressed to you?

6. Were you, or not, generally known in Augusta; were you personally acquainted with the post-master there, in July, 1837; and were you not in the habit of returning to New York every summer, and have you not reason to believe that such habit was not known at the post-office, and at the Bank of Augusta?

7. Do you know any other matter or thing, material to the defendant? if yea, declare the same fully.

MEMMINGER & JERVEY,
Deft's Attorneys.

JOHN W. MITCHELL,
TALMAN.
Commissioners for the Def't.

R. B. Rhett, *ads.* R. F. Poe.

The plaintiff will please take notice, that at the expiration of ten days from this date, a commission will be taken out for the examination of D. Timberlake, of the city of New York, (a witness to be produced on the part of the defendant,) upon the several interrogatories above set forth.

Dated 25th Jan'y, 1841.

MEMMINGER & JERVEY,
Deft's Atty's.

R. F. Poe, Cashier, *vs.* R. B. Rhett.

Cross-interrogatories, to be administered to D. Timberlake, a witness said to reside in New York, and to be produced, sworn and examined on the part and behalf of the defendant, put in for greater caution, but expressly reserving all and all manner of benefit of exception to the witness, the interrogatories, and the testimony taken under the commission issued thereon; to be urged on the opening and reading of the commission.

1st. Have you any interest in the event of this suit? or do you feel any bias or disposition to favor either party?

2d. Were your residence and habits of migration positively known to the plaintiff, and also the Bank of Charleston, South Carolina?

3rd. Say, when you communicated to the plaintiff, where was your place of business? Did you not hold yourself out as having a place of business at Augusta; and when you removed, did you give express notice to the Bank of Augusta where letters on business would reach you?

4th. Did you, on leaving Augusta in 1837, leave an open counting house, or clerk, or any person charged with your mercantile business? if so, who was your clerk, and where was your counting house?

5th. If you left any instructions at the post-office, were they verbal or in writing? To what place did you direct your letters to be sent? State it exactly, and if more than one, name them all; also, state whether you also notified the Bank of Augusta, or the Bank of Charleston, of your movements.

6th. Were you at that time solvent, and had you the means of paying the draft named in the fifth interrogatory in chief? Did you have reason to believe, and if so, what was your reason, that any such notice would be sent to you? and had you received any such notice, had you funds or means to meet the same? If so, what became of those funds?

7th. Did you return directly from Augusta to New York? If so, state the day you left Augusta, and the day you arrived in New York, and how and in what manner you informed the plaintiff of your movements.

8th. What was your pecuniary situation at the date of the protest of your draft of $8000; had you any ways and means to meet the same? State how the same arose; what funds had you on which you could draw, or did you draw to raise money? What was the precise character of your transactions with Benjamin R. Smith? Did you remit to him produce? if so, attach the invoice, or invoices thereof? if not, state and fully declare the fund on which you drew, and refer to the entries in your books, stating your funds in his hands, giving their several dates and amounts. Did you make any preparations to meet the said draft, in case it was protested? and if so, state fully and at large, in what your funds then consisted; or were you then broken up, and failed, and wholly unable to meet the said draft?

BENTHAM & HUNT,
Plff's Attys.
KING & WALKER,
Plff's Atty's.

Depositions of witnesses sworn and examined, &c.

Deposition of Dixon Timberlake, a witness produced, sworn and examined on oath at the office of John W. Mitchell, No. 23, Nassau street, in the city of New York, on the 12th day of March, in the year of our Lord one thousand eight hundred and forty-one, before us, John W. Mitchell, George F. Talman and Robert J. Dillon, commissioners named in the annexed commission. And we before actiug in the premises, having been duly sworn in the manner prescribed in the said annexed commission issuing out of the Federal Circuit Court of the United States, for the District of South Carolina, directed to John W. Mitchell, George F. Talman, and R. J. Dillon, for the examination of the said witness, D. Timberlake, in a certain cause depending in said court, wherein R. B. Rhett, of South Carolina, is defendant, and R. F. Poe, of the State of Georgia, is plaintiff; on the interrogatories, and cross-interrogatories annexed to said commission.

The said witness, Dixon Timberlake, being duly sworn, deposeth and saith as follows:

1. To the first interrogatory he saith: I was engaged at Augusta in business in May, 1837, namely, in purchasing cotton; it involved a large amount of money; it required an amount of credits exceeding one hundred thousand dollars, for one season.

2d. To the second interrogatory he saith: I did not consider myself a resident of Augusta; I visited Augusta merely for business purposes; my head quarters had been for several years at New

York, and then was; I did go from New York in the cotton buying season at the South, and usually returned thither after the season was over.

3d. To the third interrogatory he saith: I think it was known in Augusta that I came from New York; I do not know that it was known to the plaintiff, or to the Bank of Augusta; my principal letters of credit were on New York; I was authorized to draw at any one time on New York, for about one hundred thousand dollars; the letters of credit were in my estimation from houses of the first standing, and were so considered by the Bank of Augusta; a part of the letters were offered to and accepted by the Bank of Augusta; the letters accepted by the bank were from Buchanan Denistoun, & Co., and Wood, Johnston & Burritt; these credits existed in my favor in the business season of 1837.

4th. To the fourth interrogatory he saith: It was about the last of May, or early in June, when I left Augusta in the summer of 1837. The manner of my leaving Augusta, was open and public; I left Augusta in the mail stage; it was after dinner, between dinner and sun-down; the stage drove up to the door of the boarding house, where I was staying, from which I took my departure; no officer of the bank was passenger with me.

5. To the fifth interrogatory he saith: I received letters from Augusta subsequent to the instructions mentioned in this interrogatory; I received letters at the point mentioned in such instructions, or at the places indicated by further instructions at that point; I have no reason to believe that a letter notifying me of the non-payment of B. R. Smith's bill for $8000, mentioned in this interrogatory, was left at the post-office at Augusta, as I never received such letter; I did receive other letters from Augusta, forwarded thence in the summer of 1837; there is no reason that I know of, why a notice concerning the bill, if put into the post-office at Augusta addressed to me, should not have reached me.

6. To the sixth interrogatory he saith: I was generally known in Augusta; not personally acquainted with the post-master at Augusta in 1837, or at any other time, but was personally acquainted with the deputy post-master. I was in the habit of returning to New York every summer; I think that such habit was known at the post office, from the instructions given by me for forwarding my letters, but I do not knowthat such habit was known at the Bank of Augusta.

7. To the seventh interrogatory he saith: I do not.

DIXON TIMBERLAKE.

Taken and subscribed before us this 12th March, 1841.

JOHN W. MITCHELL,
GEO. F. TALMAN,
ROB. J. DILLON.

1st. To the first cross-interrogatory he saith: Whether I have any interest in the event of this suit or not, I am unable to say.

The Bank of Augusta has a suit pending against me, as drawer of the bill mentioned in the fifth direct interrogatory; I do not feel any bias either way, or disposition to favor either party.

2d. To the second cross-interrogatory, he saith: I do not know.

3d. To the third cross-interrogatory, he saith: I never informed the plaintiff where my place of business was; I did not hold myself out as having a place of business at Augusta; when I left Augusta, I did not give express notice to the bank where letters on business would reach me.

4th. To the fourth cross-interrogatory, he saith: I did not.

5th. To the fifth cross-interrogatory, he saith; my instructions to the post-master were in writing, in a note to him directing him where to forward them, but the particulars I cannot recollect; I notified neither the Bank of Augusta, nor the Bank of Charleston, of my movements.

6th. To the sixth interrogatory, he saith: When I left Augusta it was impossible to say whether I was solvent or not, because my drafts to a large amount had come back protested. Had the draft for $8000 come back during my stay at Augusta, I could not have paid it, because my credit at the bank was stopped; supposing as I did, that the draft of eight thousand dollars would have been paid at maturity, I did not expect any notice of protest; had I received the notice at Augusta, or elsewhere, I should not have been able to pay the amount.

7. To the seventh cross-interrogatory: I did not return directly from Augusta to New York; I left Augusta about the last of May, or early in June, and did not arrive in New-York until early in October. I did not make any communications to the plaintiff of my movements.

8. To the eighth cross-interrogatory, he saith:

At the maturity of the draft of $8000, I was without funds, and my affairs involved, by the failure of several houses on whom I had drawn bills. I had at that time no ways or means to meet any calls for money, because all my credits were stopped by the banks. I had no funds on which I could draw. I could not get money for my drafts, and therefore did not draw any. I purchased cotton and bank stocks on joint account with Benjamin R. Smith. I sent him one hundred and twenty-nine bales of cotton on joint account. The cost was $6,671 82, and gave him authority to draw for five thousand dollars on Savannah, for which he did draw. The cotton was sold at great loss, but the nett proceeds, with the $5000, were more than sufficient to pay the draft of eight thousand dollars. I am unable to give a copy of the invoice of the cotton; not supposing that the draft for eight thousand dollars would be protested, I made no preparation for its payment, left Augusta before its maturity, and never heard of its being protested until an accidental meeting with Mr. R. B. Rhett, many months, perhaps a year after, in New York. I have already stated that I was unable to meet

the draft for $8000, had it come back. The failure of several houses on whom I drew having broken up my business in Augusta, and my credit stopped at the bank.

DIXON TIMBERLAKE.

Taken and subscribed before us, this 12th March, 1841.

JOHN W. MITCHELL.

We, the subscribers, the commissioners named in the annexed commission, do hereby certify, that the foregoing depositions of Dixon Timberlake, in answer to the interrogatories and cross-interrogatories affixed to the annexed commission (the said depositions being comprised in three sheets), were duly taken by and before us, agreeably to the instructions contained in the said commission, at the city of New York, this twelfth day of March, one thousand eight hundred and forty-one.

In witness whereof we have hereunto set our hands, on the day and year, and at the place last mentioned.

JOHN W. MITCHELL, [L. S.]
GEO. F. TALMAN, [L. S.]
ROB. J. DILLON. [L. S.]

And the said defendant, further to maintain the said issue on his part, called the following witnesses, who testified as follows, that is to say:

Benjamin R. Smith, testified that the affairs of his assigned estate are nearly closed. That the defendant will lose by him $15,000 or $16,000, and that if this suit is decided against the defendant, his loss will be $8000 more. That from the year 1833, the residence of Timberlake has been at New York. That Timberlake had letters in his favor from the first houses in New York, and that he considered Timberlake a man of business and of integrity. That before the year 1837 he had trusted Timberlake, and had had no reason to distrust him. That Timberlake came out to the South occasionally during the winter months; he would come out in November or December, and return to the north in May or June. That on the 7th March, 1837, Timberlake drew on him a bill of exchange for $5000, which was accepted by him on the 9th of the same month. That Timberlake did not state particularly the purpose for which that bill was drawn. That on the 8th of March, in the same year, Timberlake drew on him a bill of exchange for $3000, which he accepted on the 11th of that month. That he, the witness, was placed in funds to meet those drafts. That Timberlake had authorized him to draw on Bayard & Hunter for $5000, and that he accordingly drew on them for that amount, on the 24th February, 1837, which was placed by him to the credit of Timberlake, as applicable to meet any of his drafts on him. That Timberlake had previously shipped to Bayard & Hunter 129 bales of

cotton, on the joint account of himself and the witness, amounting to upwards of $6000; and that on the 6th of April, 1837, he, the witness, drew on Bayard & Hunter for $5000 more, so that he considered himself in funds to the amount of $10,000, to meet Timberlake's drafts on him. That there were three other bills of exchange drawn by Timberlake on him, amounting to $13,500, and that he went to Augusta early in the month of May, to procure funds to meet those drafts, as he considered he had funds to meet the drafts for $8000, but not to meet the drafts for $13,500. That the three last mentioned drafts arose on the purchase of shares in the stocks of the Mechanics' Bank of Augusta, and the Hamburgh Bank—the Mechanics' Bank of Augusta stock costing $9,825, and the Hamburgh Bank stock costing $3,500. That Timberlake kept those stocks to himself; and that when he, the witness, applied to him for them, his reply was, that he had used them for other purposes, but that he would endeavor to place him in funds. That the three drafts, amounting to $13,500, went out on the 20th, 23d, and 27th May, 1837; and that the drafts for $5000 and $3000, were renewed by the draft for $8000, before the said three drafts had arrived at maturity. That he accepted the (renewal) draft for $8000, because he considered himself in funds to meet the (original) drafts for $5000 and $3000. That there was another draft for $14,000 drawn on him by Timberlake, for the purchase of Hamburgh Bank stock, on the joint account of Timberlake, the witness, and a Mr. Cowling. That Timberlake furnished his proportion of money, and that draft was paid on the 18th May, 1837. That he, the witness, renewed the drafts for $5000 and $3000, to ascertain whether Timberlake would fulfil his contract respecting the draft for $14,000. That the cotton sent to Bayard & Hunter turned out $3,500, a loss of nearly 50 per cent. on the amount of the purchase. That if Timberlake was now to pay the three drafts, amounting to $13,500, he, the witness, would owe him the amount of the draft for $8000; and that it was agreed between Timberlake and himself, that he, the witness, would pay the draft for $8000, and that Timberlake would pay the three drafts amounting to $13,500.

On his cross-examination, this witness testified that he did not pay the draft for $8000 at its maturity, because he had previously failed in business and executed a deed of assignment. That by that deed, certain creditors for borrowed money were first secured, and after them his endorsers. That he did not assign any fund, particularly, to meet the draft for $8000. That the proceeds of the cotton sent to Bayard & Hunter were realized in June or July, after he had executed his deed of assignment; and that he never applied those funds to the payment of Timberlake's drafts on him. That it is his impression that Timberlake paid the discount on the $8000 draft. That Timberlake sent that draft to him of his own accord. That Timberlake was aware of the deed of assignment executed by the witness. That he, the witness, closed his business

on the 31st May, 1837. That when Timberlake drew the bill for $5000, he did not advise him on what account it was drawn. That Timberlake was authorized to purchase cotton on the joint account of himself and the witness. That Timberlake advised him of his having purchased the stocks on which the drafts for $13,500 were drawn, and proposed to him to take a portion of the same, to which he assented, and became interested with Timberlake therein. That Timberlake afterwards offered to him 300 shares in the Georgia Insurance and Trust Company, on which 10 per cent. had been paid, which he took on condition of returning the same to Timberlake when Timberlake should give him the other stocks. That he had no communication with the plaintiff at Augusta. All his intercourse was with Mr. Adger. That the proceeds of the cotton sent to Bayard & Hunter, in Savannah, were passed by him to the credit of R. B. Rhett, (the present defendant), and went to pay a note with Mr. Rhett's endorsement, discounted at the Bank of Charleston. That to obtain possession of the cotton in the hands of Bayard & Hunter, who would not deliver it unless the draft on them for $5000 was paid, he took out of his assigned estate $1,500 for that purpose, and borrowed for the same purpose, from the Bank of Charleston, $3,500, on a note endorsed by the defendant, and that the proceeds of the said cotton were applied to the payment of that note. That the only instance in which Timberlake had violated the confidence of the witness in him, was the misapplication of the Hamburgh and Mechanics' Bank stocks. That Timberlake was aware, before the $8000 draft had arrived at maturity, that he, the witness, would not pay the three drafts amounting to $13,500. That it was Timberlake's agreement to pay the drafts for $13,500, and he, the witness, was to pay the $8000 draft out of funds in his hands. That after Timberlake failed to furnish him with funds to take up the drafts for $13,500, there was no agreement between him and Timberlake respecting the draft for $8000.

In the course of the cross-examination of this witness, his "Day-book and Journal," and "Ledger C," were produced in evidence, the said books containing, among others, accounts which are in the words and figures following, to wit:

Extracts from "Day-book and Journal" of B. R. Smith.

		No.	Dolls. Cts.
	(at page 79.)		
	Charleston, Jan'y 6th, 1837.		
Jan. 6.	D. Timberlake, to Sundries.		
	General sales for ac't of 112 bales of cotton, rec'd pr. Caledonian and shipped pr. Lexington, - - - - - - -		190 75
	Wharfage account, landing and shipping,		8 96
	Charges on sales, drayage $7, mending and bagging $9 87, - - - - - -		16 87
	Commission account, receiving and forwarding, at 50, - - - - - -		56 00
	(at page 80.)		
	Charleston, Jan'y 6th, 1837.		
	Sundries, to Bills Payable.		
	D. Timberlake, for his dft. 2 Jan. a 60 ds. favr. G. W. Lamar, cashr., acceptd. 5 Jan.	709	1,200 00
	(at page 109.)		
	Charleston, Feb'y 24th, 1837.		
	Cash, to Sundries.		
	D. Timberlake, rec'd for my dft. dated 25, a 15 ds., fav. M. Duncan & Co., on Bayard & Hunter, - - - - - -		5,000 00
	(at page 114.)		
	Charleston, March 3rd, 1837.		
	Sundries, to Bills Payable.		
	D. Timberlake, for dft. 6 Feb. a 90 ds., favor J. W. Cowling, due 7–10 May, - -	735	14,000 00
	do. do. dft. 14 Feb. at 90 ds. accept'd 16th, fav. W. A. Cain, due 17–20 May, - - - - - - -	739	5,000 00
	(at page 119.)		
	Charleston, March 13th, 1837.		
	Sundries, to Bills Payable.		
	D. Timberlake, acc. Mar. 9, for his dft. 7 Mar. a 60 ds. favor W. A. Kain, due 6–9 May, - - - - - - -	757	5,000 00
	do. do. Mar. 11, do. 8 Mar. a 60 ds. favor W. A. Kain, due 7–10 May, - - - - - - -	762	3,000 00

		No	Dolls. Cts.
	(at page 125.)		
	Charleston, March 23rd, 1837.		
Jan. 6.	Sundries, to Bills Payable.		
	D. Timberlake, accpd. 21, for his dft. dated 18 Mar. a 60 ds., fav. W. A. Kain, due 20 –23 May, - - - - - - -	774	5,000 00
	do. do. accp'd 25 his dft. dated 21 Mar. a 60 ds., fav. W. A. Kain, due 24 –27 May, - - - - - - -	779	3,500 00
	(at page 131.)		
	Charleston, April 6th, 1837.		
	Bayard & Hunter, to D. Timberlake.		
	For am't of my dft. dated March 22, a 60 ds. charged to Cr. of former instead of latter,		5,000 00
	(at page 148.)		
	Charleston, May 17th, 1837.		
	Sundries, to D. Timberlake.		
	J. V. Cowling, for this am't trans'd, being am't remitted by the latter to pay his pro. Hamb. B'k stock, - - - - -		4,690 00
	Hamburg Bank stock; for my pro. Hamb. Bank stock, - - - - -		4,690 00
	Cash; his pro. ditto rec'd of T. Chapman, cashr. - - - - - - -		4,620 00
	(at page 149.)		
	Charleston, May 19th, 1837.		
	Sundries, to Cash.		
	D. Timberlake, paid protest on note of $14,000, Bank of Charleston, - -		2 00
	(at page 152.)		
	Charleston, May 29th, 1837.		
	Sundries, to Cash.		
	D. Timberlake, paid for check renw'd on acc. exp't on cotton to Bayard & Hunter,		305 25
May 30	Sundries, to Cash.		
	D. Timberlake, paid dft. drawn on Bayard & Hunter, and by them ret'd on acc't cotton I. & D. T. - - - - - -		5,000 00

Extract from Ledger "C," of B. R. Smith.

D. TIMBERLAKE, *New York.* (at page 50.)

1835.	Febr'y,	275	To	$ 4 59	1835.	Jan'y 1st,		By Bal. Led. B.	$831 82
"	April,	11	"	13,172 84	"	March,	309	By	3,500 00
"	May,	38	"	1,200 00	"	June,	59		3,000 00
"	June,	60	"	16 80	"	July 1st,		By Balance,	7,062 41
				$14,394 23					$14,394 23
"	July 1st,		To Bal.	7,062 41	"	August,	99	By	3,500 00
"	August,	99	To	3,016 98	"	do.	112		13,043 45
"	do.	112	"	55 78	"	Septemb.,	131		22 09
"	September,	120	"	4,353 91	"	do.	142		1,425 47
"	do.	142	"	3,500 00	"	Novemb.,	191		5 00
"	Novemb.,	195	"	1,482 45	"	Jan. 1,		By Bal.	1,480 52
"	Decemb.,	206	"	5 00					
				$19,476 53					$19,476 53
1836.	Jan. 1,		To Bal.	1,480 52	1836.	May,	334	By	150 00
"	Febr'y,	273	To	75	"	July 1,		By Bal.	1,481 27
"	April,	300	"	50 00					
"	do.	302	"	50 00					
"	do.	304	"	50 00					
				$1,631 27					$1,631 27

"	July 1,		To Bal.	1,481 27	"	Dec.	64	By	1,392 16
"	Nov.	51	To	50 00	"	Jan 1,		By Bal.	201 58
"	Dec.	74	"	62 47					
				$1,593 74					$1,593 74
1837.	Jan. 1,		To Bal.	201 58	1837.	Febr'y,	109	By	5,000 00
"	do.	79	To	272 58	"	April,	131	By	5,000 00
"	do.	80	"	1,200 00	"	May,	148	By	14,000 00
"	March,	114	"	14,000 00	"	May 31,		By Bal.	18,481 41
"	do.	114	"	5,000 00					
"	do.	119	"	8,000 00					
"	do.	125	"	8,500 00					
"	May,	149	"	2 00					
"	do.	152	"	305 25					
"	do.	152	"	5,000 00					
				$42,481 41					$42,481 41
"	May 31,		"	$18,481 41					

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On his examination, in reply, this witness testified, that in his transactions to obtain the cotton from Bayard & Hunter, in Savannah, it was his object to aid his assigned estate. That R. B. Rhett (the defendant) and W. E. Haskell, were his endorsers. That the defendant had no interest in his business, and derived no benefit therefrom, and that W. E. Haskell was once concerned in business with him (the witness). That the defendant was to be a protected endorser of the witness. That after the failure of the witness, the defendant made a statement to the banks holding his endorsements, inserting therein all his property and liabilities, and offered them 75 per cent. on the amount of his liabilities, for a release. That three of the banks acceded to that proposition; the Bank of the State agreed to a different proposition; and that the Bank of Charleston, and the Bank of Augusta, would accede to no proposition from the defendant for a compromise.

In the course of the examination of this witness, in reply, three letters were produced in evidence, which are in the words and figures following, to wit:

No. 1.—Letter from B. R. Smith to the Bank of Augusta.

Charleston, 20 *June*, 1837.

To the President and Directors of the Bank of Augusta:

Gentlemen,—I am indebted to your bank as acceptor on the drafts of D. Timberlake, for $13,500. I think it due to myself to state to you how I became your debtor, and why it has been put out of my power to meet my engagements.

I shall state facts founded on letters, which, if requisite, can be produced.

The drafts passed through your institution by him on me, amount to $21,500. Of this, $5000 was drawn to raise funds to subscribe on J. ac't, to the Savannah Insurance Company, and the pro'ds of which, he wrote me, he had remitted Bayard & Hunter. I reimbursed myself by drawing on them for an equal amount, and for which amount I gave security to your agent, when he renewed the drafts of $5000 and $3000. This I do not consider any use of his funds.

His letters from 7th March to 21st, informed me that he had purchased, on J. ac't, 75 shares Mechanics' Bank stock, at $131, $9,825; and 50 shares of Hamburg Bank stock, (on his, another's, and my acc'ts) at $70, $3,500; and that these transactions he considered confidential. I assuredly considered them in no other light. The stocks were to be sold to meet the drafts, and I was to be at no outlay. He also informed me that he would ship 100 (the quantity turned out 129) bales of cotton on our J. ac't, to Messrs. Bayard & Hunter, of Savannah, subject to my order.

From the 7th to 21st, he drew on me for $16,500; and if he charges me with my half costs of the cotton, (and I contend he has no right to charge me more,) and this added to the cost of the stocks, will make an equal amount of $16,500.

I had a right, therefore, to expect that the stocks would be held confidentially for the drafts drawn for their purchase.

Early in April, apprehending difficulty from the times, I urged the necessity of an early provision for these drafts; and, finally, stated, if it was thrown upon me, that the stocks must be placed in my hands. To my regret, I am informed, that he had pledged the Mechanics' Bank stock for $7,500, and used the money for some other purpose; (of the Hamburg Bank stock I have heard nothing;) that he had done wrong; that he would endeavour to put things in their proper state; and that if he could not, he would put stocks of equal value in place.

Mr. T. may have faithfully intended to do what was right; but it was a fatal step to me, as he placed it out of my power to have given up to your institution what you had a right to, the stocks which were purchased by the drafts.

He has since transferred to me 300 shares of the Ga. Trust and Insurance Company, upon which payments have been made, and which I was to hold until the other stocks were placed in my hands. I took this stock, because I could get nothing else, and in the hope that he would replace the other stocks, that I might offer them to you in settlement. But this is hopeless; and a short time since I requested him to tender you the stock which I hold, as it was properly bound to you. As he has not done this, and appears disposed to endeavor to get possession of it by paying the additional instalments on it that may be due, I think it my duty to offer it to you. You can consult the books of the company, and see what is paid on it; and as soon as you determine, I will transfer it, by sending you a power of attorney. I expect to be released from the drafts. More than this I cannot offer. I am insolvent, and have assigned every thing, excepting this stock, which I conceived bound to your debt.

As to the cotton, the value will not scarcely cover the draft of $3000, for which I gave security.

These observations are made, as thinking it due to myself that you should fully know how I became bound for the drafts of Mr. Timberlake. Please give me an answer; and it would be as well to call at the office of the Trust and Insurance Company, and stop any interference of Mr. T. The stock stands in my name.

Very resp. y'rs,

BENJ. R. SMITH.

Letter No. 2, from R. F. Poe, Cash'r, to Benj. R. Smith.

Bank of Augusta, July 25th, 1837.

BENJ. R. SMITH, Esq., *Charleston, So. Ca.*:

Dear Sir,—I this morning submitted your letter of the 21st instant, to our board of directors, and have been directed to say, that after having considered the proposition which you make, in behalf of the Hon. R. Barnwell Smith, they feel it to be their duty to decline the same.

I remain, with respect,
Your ob't serv't,

ROBT. F. POE, *Cash'r.*

Letter No. 3, from C. G. Memminger, Esq., to M. King, Esq.

Charleston, May 6, 1839.

M. KING, Esq.:

My Dear Sir,—In consequence of the conversation we had the other day, I have had a conference with Mr. Smith, as to the claim of the Bank of Augusta; and with a view to a compromise of the whole controversy, I propose to you that Mr. R. Barnwell Rhett, and Mr. Benj. R. Smith, shall deliver to the bank such securities as may be approved of by them, payable on the 1st March next, for the amount of the acceptance of eight thousand dollars, which they hold, provided they will accept the same as a full *composition*, and entirely release Benjamin R. Smith from all demands they hold upon him. In regard to Mr. Timberlake, the bank may retain his liability, and may pursue him as far as they please; but the other parties, R. Barnwell Rhett and W. E. Haskell, to be embraced in the release.

Respectfully,

C. G. MEMMINGER,
Att'y of the Parties.

On the examination of this witness by the court, he testified, that when he accepted the $8,000 draft, and gave the note (sued on) for that amount, as collateral security for the payment of the said draft, he did not mention to R. B. Rhett, (the defendant,) or Wm. E. Haskell, the endorsers on the said note, that he had funds in hand, of Timberlake, to meet his acceptance of the said draft for $8,000. That the 129 bales of cotton shipped to Bayard & Hunter, were on the joint account of Timberlake and himself, and, he presumes, were paid for out of the proceeds of Timberlake's drafts on him; that his draft on Bayard & Hunter, of the 24th February, 1837, for $5000, was drawn to pay subscriptions to the stock of the Savannah Insurance Company; but the subscriptions to that stock being so great, no stock was obtained by him; that Timberlake did not advise him on what account his draft on him of the 18th March, 1837, for $5000, was drawn; that there is no entry in the account

in his books, between him and the defendant, of the proceeds of the cotton in Bayard & Hunter's hands; that when the note sued on was given by him, he gave no pledge to his endorsers as to his securing them; and that he is not aware of any understanding, between the endorsers, on the subject of priority of payment. It was understood, after he dissolved his copartnership with Mr. Haskell, that Mr. Rhett should be a protected endorser of the witness; that the endorsements were made by him, under a general power from the endorsers to him, to use their names; that he went to Augusta to see Timberlake, before the note sued on was given; that he had not, then, funds in his hands to meet the three drafts, amounting to $13,500; but Timberlake then promised to put him in funds for that purpose; that he did not at that time state to Timberlake what he would do with the funds in his hands.

In answer to a question proposed by the foreman of the jury to this witness, he said, that his letter of credit in favor of Timberlake, was for speculations in cotton, on the joint account of Timberlake and himself; and that in all their other transactions, except one, they were to share and share alike.

John W. Cheesborough testified, that he has known Timberlake since the winter of 1834, or 1835; and that he is a man of good character. That in November or December, 1834 or 1835, Timberlake brought to him a letter of introduction from New York, and that New York was Timberlake's place of residence.

On his cross-examination, this witness testified, that he knows nothing of Timberlake as a man of business; he was only acquainted with him in New York and Charleston; that he boarded in the same house with Timberlake, in New York; he met him there three different years; that he never knew Timberlake to have a counting-house in New York, or Charleston; that Timberlake did not keep house in New York; the witness always found him at Bunker's; that he never transacted any business with Timberlake; that Virginia is the place of Timberlake's birth.

On his examination in reply, this witness testified that Timberlake was a bachelor; he resided in New York, as many persons reside there.

That if the witness had been asked as to the place of Timberlake's residence, he would have given New York as such.

And hereupon, the testimony to maintain and prove the said issue on the part of the said defendant, was closed.

Whereupon, the counsel, learned in the law, of the said plaintiff, further to maintain and prove the said issue on his part, produced and read in evidence the depositions of Benjamin Hall, and Edmund B. Glascock; the same having been taked under a commission issued for their examination, as witnesses in this case, which said commission and depositions are in the words and figures following, to wit:

Commission.

THE UNITED STATES OF AMERICA,
District of South Carolina, in the Circuit Court.

The United States of America, to Benjamin H. Warren, John H. Wilde, Michael F. Boisdan, A. I. Miller and James Gardner, Esquires, greeting:

Whereas, a certain cause is now depending in the Circuit Court of the said States, wherein Robert F. Poe, a citizen of Georgia, is plaintiff, and R. B. Rhett, a citizen of South Carolina, is defendant, and it being necessary to the investigation of the said cause, that certain persons, Benjamin Hall and Edmund B. Glascock, resident in Augusta, Georgia, should be examined on certain interrogatories:

Now know ye, that in confidence of your prudence, ability and integrity, you are by these presents appointed, and full power and authority are given hereby to yon, any two or more of you, diligently to examine all witnesses whatsoever, upon certain interrogatories, to be exhibited to you, as well on the part of said plaintiff, as on the part of the said defendant, or either of them; and therefore, you, any two or more of you, are hereby authorized and required, on certain days and at certain places, *or* to be appointed by you for that purpose, to cause the said witnesses to come before you, and then there to examine each of them apart on the said interrogatories, on their respective corporal oaths, first taken before you, or any two or more of you, and to take such their examinations and reduce them into writing on paper; and when you shall have so taken them, to send the same to the judges of the said Circuit Court, in the State aforesaid, closed up, and under your seals distinctly and plainly set, together with the interrogatories, and this writ.

And you, and every of you, are hereby further required, that before you act in, or be present at the swearing or examining of any witness or witnesses, you do severally take the oath first specified in the schedule hereunto annexed; and you, or any two or one of you, are hereby authorized and empowered, jointly or severally, to administer such oath to the rest or any other of you; and you are hereby further authorized and required, jointly and separately, to administer the oath last specified in the said schedule hereunto annexed, to all and every of the clerks, or clerk employed in taking, transcribing or engrossing the deposition or depositions of witnesses so examined, by virtue of these presents, before they, or he, shall be permitted to act as clerks or clerk, or be present at such examination.

Witness, R. B. Taney, Chief Justice of the said States, this sixth day of August, in the year of our Lord, one thousand eight hundred and forty, and in the 65th year of the Sovereignty and Independence of the United States of America.

[SEAL OF COURT.] H. Y GRAY,
Clk. Cir. Court.

Commissioners' Oath.

You shall accordingly, to the best of your knowledge, truly, faithfully, and without partiality to any or either of the parties in this cause, take the examination and deposition of all and every witness and witnesses, produced and examined by virtue of the commission hereunto annexed, upon the interrogatories now produced and left with you. And you shall not publish, disclose, or make known to any person or persons whatsoever, except the clerk or clerks by you employed, and sworn to secrecy in the execution of this commission, the contents of all, or any, of the depositions of the witnesses or any of them, to be taken by you and the other commissioners in the commission named, or any of them, by virtue of the said commission, until publication shall pass by rule or order of the said Circuit Court. So help you God.

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take and write down, transcribe and engross the depositions of all and every witness and witnesses, produced before, and examined by the commissioners, or any of them, named in the commission hereunto annexed, as far forth as you are directed and employed by the said commissioners, or any of them, to take and write down and engross the said depositions, or any of them; and you shall not publish, disclose, or make known, to any person or persons whatsoever, the contents of all or any of the depositions of the witnesses, or any of them, to be taken or written down, transcribed, or engrossed by you, or whereto you shall have recourse, or be any ways privy, until publication shall pass by rule or order of the said Circuit Court. So help you God.

Instructions for the Commissioners.

The commissioners must first attend to the instructions contained in the commission; after which, when they are proceeding to business, they will put the first interrogatory to the first witness produced, and set down his answer thereto on a sheet entitled, "Depositions of witnesses sworn and examined," &c. &c.; when done with this, they will put the second interrogatory, and set

down his answer to that also, and so on, till they have finished putting the interrogatories to him; they will then proceed to examine such other witnesses as may be produced, in which case they will entitle their depositions in the same manner as those of the first, with the difference of the parties' name, age, &c., &c.; they will then fix and seal the several sheets together, and set their hands and seals at the bottom of the whole, and their hands to each sheet, leaving the covering sheet on the outside of the whole. Then enclose the whole, commission and all, in a large paper well sealed up with their seals, with their names affixed thereto: and having first endorsed the packet, on a corner thereof, with the names of the parties, in the same manner as is done on the covering sheet of the depositions, direct the same to Henry Gray, Esq., clerk of the said court, Charleston, So. Ca.

If this commission is returned by post, one of the commissioners who examined the witness, must endorse and sign a certificate that the same was lodged by himself in the post office at

N. B. Should the sheets annexed not be sufficient, the commissioners can easily tack others thereto, putting the covering sheet over the whole; and of the commissioners will be sufficient to take the examination.

ROBERT F. POE,
a citizen of the State of Georgia,
vs.
R. B. RHETT,
a citizen of the State of So. Carolina.

Interrogatories to be administered to Benjamin Hall, Esq., now or lately assistant post master in Augusta, in the State of Georgia, to be produced, sworn and examined on the part and behalf of the plaintiff.

1st Interrogatory.—Do you know the plaintiff and defendant, in the title of this case above mentioned, or either of them? How long have you known either of them? How did your acquaintance commence with them, or either of them? What was their standing and situation in life, according to the best accredited reports which have come to your knowledge? Have you, and do you believe such reports?

2d Interrogatory.—Dou you consider the credit of the signature, as endorser, of the defendant, R. B. Rhett, or as acceptor or drawer, of a bill of exchange, or promissory note, to the amount of eight thousand dollars, good?

3d Interr'y.—Did you or did you not know on or about the month of October, 1837, or previous thereto, a certain individual, named Dixon Timberlake? if yea, were or were not a number of letters received for him at the post office in Augusta, until that period? If yea, how and in what manner were they disposed of? Were

they or not advertised? or were they delivered, according to directions left at the post office by the said Dixon Timberlake? How, and in what manner did the said letters accumulate, and how and in what manner were they disposed of? Were they or not forwarded to the General Post Office, at Washington, as unclaimed letters, to be there disposed of at the discretion of the said Department.

4th. Did or did not the said Dixon Timberlake leave at the post office, at Augusta, any and what instructions as to the delivery or forwarding on to any particular places, of any letter or letters addressed to him?

5th. If such directions had been left at the office, would Mr. Timberlake's letters have been allowed to accumulate.

6th. Do you or do you not file all directions received at the office at Augusta for forwarding letters? If yea, examine your file and ascertain and declare whether there is thereon any directions from the said Dixon Timberlake, to forward his letters to any particular place?

7th. Were or were not the letters addressed to Mr. Dixon Timberlake, received at the post office at Augusta, advertised as uncalled for letters? How often and how many letters were so advertised? How were the said letters ultimately disposed of, and to whom delivered? Were there any other, and what number of letters received at the said post office, addressed to the said Dixon Timberlake? How were they disposed of? Were they delivered to the said Dixon Timberlake himself, or any other, and what person by name? Were they advertised, or in what manner were they ultimately disposed of? Declare fully.

8th Interrogatory. Do you or do you not believe; from the subsequent disappearance of the letters in the Augusta post office, without a pevious advertisement, that they were either taken out of the post office by some agent of the said Dixon Timberlake, or forwarded to him, in conformity to his order to that effect?

9th Interrogatory. Do you or do you not know when, or about what period the said Dixon Timberlake left the city of Augusta? Where did he proceed to? Have you or have you not ever heard of or from the said Dixon Timberlake, since he left the city of Augusta? If yea, how often, and from what place or places?

10th Interrogatory. What occupation, business, or trade did you pursue and follow on or previous to the first day of October, 1837.

11th Interrogatory. Do you know, or can you set forth any other matter or thing, which may in any wise tend to the advantage and benefit of the said plaintiff in this cause? If so, set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge, remembrance, and belief, together with your reasons at large, as if you had been thereto particularly interrogated.

BENTHAM & HUNT,
Plffs Att'ys.

ROBERT F. POE, a citizen of Georgia,
vs.
R. B. RHETT, a citizen of So. Carolina.

Interrogatories to be administered to Edmund B. Glascock, Esq., now or lately post-master in Augusta, in the State of Georgia, to be produced, sworn, and examined on the part and behalf of the plaintiffs.

1st Interrogatory. Do you know the plaintiff and defendant in the title of this case above mentioned, or either of them? How long have you known either of them? How did your acquaintance commence with them, or either of them? What was their standing and situation in life, according to the best accredited reports which have come to your knowledge? Have you and do you believe such reports?

2d Interr'y. What occupation, business, trade or profession did you pursue or carry on in the year of our Lord, 1837? How long had you been in such business, and how long did you continue therein?

3d Interr'y. Did you or did you not known on or about the month of October, 1837, or previous thereto, a certain individual named Dixon Timberlake? If yea, were or were not a certain number of letters received for him at the post office in Augusta, until that period? If yea, how and in what manner were they disposed of? Were they or not advertised, or were they delivered, according to the directions left at the post office by the said Dixon Timberlake? How and in what manner did the said letters accumulate, and how and in what manner were they disposed of? Were they or not forwarded to the General Post Office, at Washington, as unclaimed letters, to be there disposed of at the discretion of the said Department?

4th Interr'y. Did or did not the said Dixon Timberlake leave at the post office at Augusta, any, and what instructions as to the delivery, or forwarding on to any particular places, of any letters or letters addressed to him?

5th Interr'y. If such directions had been left at the office, would Mr. Timberlake's letters have been allowed to accumulate?

6th. Do you or do you not file all directions received at the office at Augusta, for forwarding letters? If yea, examine your file and ascertain and declare, whether there is thereon any directions from the said Dixon Timberlake, to forward his letters to any particular place?

7th. Were or were not the letters addressed to Mr. Dixon Timberlake received at the post office, at Augusta, advertised as uncalled for letters? How often, and how many letters were so advertised? How were the said letters ultimately disposed of? and to whom delivered? Were there any other, and what number of letters

received at the said post office, addressed to the said Dixon Timberlake? How were they disposed of? Were they delivered to the said Dixon Timberlake himself, or any other, and what person by name? Were they advertised? or in what manner were they ultimately disposed of? Declare fully.

8th. Do you or do you not believe, from the subsequent disappearance of the letters in the Augusta post office, without a previous advertisement, that they were either taken out of the post office by some agent of the said Dixon Timberlake, or forwarded to him, in conformity to his order to that effect?

9th. Do you or do you not know when, or about what period the said Dixon Timberlake left the city of Augusta? Where did he proceed to? Have you or have you not heard from or of the said Dixon Timberlake, since he left the city of Augusta? If yea, how often, and from what place or places?

10th. Do you know, or can you set forth any other matter or thing which may, in any wise, tend to the advantage and benefit of the said plaintiff in this cause? If so, set forth the same, and all the circumstances and particulars thereof, according to the best of your knowledge, rememberance, and belief, together with your reasons at large, as if you had been thereto particularly interrogated.

BENTHAM & HUNT,
Plffs. Att'ys.

RHETT, *ads.* POE.

Cross-Interrogatories to be propounded to Benjamin Hall and Edmund B. Glascock, witnesses, to be examined on the part and behalf of the plaintiff.

To the fifth and eighth interrogatories in chief, defendant objects, because the fifth is a leading question, and the eighth calls for witness's belief.

1. Where were you in July, 1837, and in what business? Do you know who was post master at Augusta on the 11th July, 1837? And who were the assistants and clerks in the office? State the names of them all.

2. Were you in any business in Augusta in 1837, that gave you means of knowing whether Dixon Timberlake did or did not possess credit with those who had merchandize to sell, or funds to transfer?

3. If you say that letters to Dixon Timberlake were advertised by the post office in Augusta, state the evidence which you have for saying so. Do you rely on memory, or any document or memorandum? If you answer that you rely on any document or memo-

randum, let it be produced and annexed to your answer, and at the same time, state by whom such document or memorandum was prepared or written.

4. When verbal directions are given at the post office to forward any person's letters, is it unlawful to forward them as directed? Can you produce any authority for saying that such directions must be in writing, and be filed?

5. How do you know the time when Dixon Timberlake left Augusta? Had you any dealings with him? Do you know him as an acquaintance, and if you answer in the affirmative, state when your acquaintance with him began, and where you were accustomed to meet him?

6. Do you know that Mr. Timberlake has sworn that his letters, directed to him at Augusta, were forwarded to him after he left Augusta? Do you mean to be understood as knowing better, or as well as Dixon Timberlake, whether any letters or papers directed to him at Augusta, were forwarded to him in July or August, 1837, by the post master in Augusta, or his clerks?

7. If any letters or papers, directed to Dixon Timberlake, at Augusta, were forwarded to him in Virginia, in July, 1837, how can you account for it?

8. Do you know any thing more tending to shew that the allegation that Mr. Timberlake's letters and papers were regularly forwarded to him, for some time after he left Augusta, in June, 1837, may be true? If yea, declare the same fully.

PETIGRU & LESESNE,
Defts. Att'ys.
A. I. MILLER and
JAMES GARDNER,
Defts. Commrs.

ROBERT F. POE, a citizen of the State of Georgia,
vs.
R. B. RHETT, a citizen of the State of So. Carolina.

In the Circuit Court of the United States of America, for the District of South Carolina.

GEORGIA, CITY OF AUGUSTA:

By virtue of the foregoing commission, we, Michael F. Boisclair and John W. Welde, (the other commissioners refusing to act,) have caused the witnesses therein named, to come before us, at the office of the Georgia Railroad and Banking Company's branch, at Augusta aforesaid, on the day their depositions respectively bear date, and having ourselves first taken the commissioners' oath prescribed in the said schedule, we duly swore the said witnesses, severally, true answers to make to the annexed interrogatories; the

said John W. writing down the same, as the commissioners have appointed no clerk.

Deposition of the said Benjamin Hall, a resident of the city of Augusta, aged about fifty-four years, sworn and examined before us, this third day of September, 1840.

To the first direct interrogatory, he answers—I know the plaintiff, have known him from his youth up, perhaps 25 years; his standing is that of a good citizen and business man; he is a man of some property, and cashier of the Bank of Augusta; I know of no reports to his prejudice; I know nothing of the defendant whatever.

To the second, he answers—I know nothing of the credit.

To the third, he answers—I knew an individual of this name in the spring or summer of 1837; there were two or more letters received for him during that summer; I have no recollection as to how they were disposed of; I am under the impression that they were not advertised, as I do not find them on the advertising list; I have no recollection of their delivery, nor of any instruction left by Dixon Timberlake, on the subject; the letters were received at different times, and placed in a box that had been rented by Mr. Timberlake, in the post office, and there kept until the termination of his lease, on the first day of October, in the year 1837; what became of them after that, I cannot remember.

To the fourth, he answers—I have already replied to this question in my preceding answer.

To the fifth, he answers—If instructions had been left by Mr. Timberlake, his letters would have been forwarded as they were received, in accordance with those instructions; such, at least, is the custom of the office, and I know of no reason why it should have been departed from in this instance.

To the sixth, he answers—We do file such directions, but are not particularly careful of their preservation; when the files accumulate, which they do considerably in the course of the year, they are thrown away or destroyed. The rest of this interrogatory is replied to substantially in my third answer.

To the seventh, he answers—I have replied to this interrogatory as fully as it is in my power to do, by my answer to the 3d interrogatory. I know of the reception of no letters for Mr. Timberlake, after the period there testified to.

To the eighth, he answers—I *believe* the letters were forwarded to Mr. Timberlake, or taken from the post-office by some agent of his, because I do not find them embraced in the advertising lists. I know not how else to account for them.

To the ninth, he answers—My impression is, that Mr. Timberlake left Augusta in the spring, or in the early part of the summer, of 1837. I do not know where he went to. I have neither heard

from nor of him, since he left Augusta, except what has been said in connection with this inquiry.

To the tenth, he answers—I was assistant post-master in Augusta, on the 1st day of October, 1837, and had been for three years previous.

To the eleventh direct interrogatory, and to the last, he answers—I know nothing further of the matters in controversy, nor have I any belief on the subject that would benefit either party.

MICHL. F. BOISCLAIR, *Com'r.*
JOHN W. WELDE, *Commissioner.*

To the first cross-interrogatory, he answers—I was assistant post-master in Augusta, and resident in that city, in July, 1837. Edmund B. Glascock was the post-master at Augusta, on the 11 July, 1837. I was assistant post-master, and there were the following clerks in the office, viz, George W. Morgan, John Scott, Valentine Boisclair, Cæsar A. Savage, Benjamin F. Hall and William Savage.

To the second, he answers—I was not engaged in any commercial pursuit at that time, knew and know nothing of Mr. Timberlake's credit.

To the third, he answers—The nature of my replies to the direct interrogatories, renders it unnecessary to answer this.

To the fourth, he answers—The rules of the office do not require that such orders should be given in writing; they would be obeyed, whether written or verbal.

To the fifth, he answers—I cannot answer with greater certainty, as to the time when Mr. Timberlake left Augusta, than I have done in my reply to the ninth direct interrogatory. Mine was a post-office acquaintance with him, merely. I had no dealings with him beyond this. I have only stated it as my impression, that he left Augusta in the spring or early part of the summer of the year 1837; and that impression is derived from the fact, that he ceased to call for his letters at the post-office, about that period. My acquaintance with him began and ended at the post-office.

To the sixth, he answers—I do not know what Mr. Timberlake has sworn to, nor do I profess to have any greater knowledge of the matters referred to than he.

To the seventh, he answers—If such letters were forwarded, it must have been in accordance with instructions from Mr. Timberlake, or his agent.

To the eighth, and last cross-interrogatory, he answers—I know nothing further on the subject.

BENJ'N HALL.

Sworn to and subscribed, before us, this third day of September, A. D. 1840.

MICH'L F. BOISCLAIR, *Commissioner*, [L. S.]
JOHN W. WELDE, *Commissioner.* [L. S.]

Depositions of the said Edmund B. Glascock, a resident of the said City of Augusta, aged about forty-four years, sworn and examined before us, third day of September, 1840.

To the first direct interrogatory, he answers—I do not know the defendant, but have known the plaintiff some thirty years; my acquaintance commenced with him at school. His standing is that of an honest man, and a gentleman. I have no knowledge of any report to the prejudice of either party.

To the second, he answers—I went into the post-office, at Augusta, as post-master, in March, 1838, and have continued in that office to this day.

To the third, he answers—I knew Dixon Timberlake, I think, when I first went into office, and my acquaintance with him continued until he left Augusta. I remember, that letters were received at the office at Augusta, after Mr. Timberlake was said to have left the city; how many there were, or what became of them, I cannot positively say. They were not advertised, since they do not appear on the advertising files.

He leased a box at the post-office, and the letters, as received for him, must have been placed in it, until the first day of October, 1837, when his lease expired. They could not have been forwarded to the general post-office, as dead letters, I should think, because they appear never to have been advertised. My impression is, that they must have been forwarded to him, either by his own instructions, or those of some friend; because I know not how else to account for them.

To the fourth, he answers—I cannot remember that Mr. Timberlake left any such instructions.

To the fifth, he answers—If such instructions had been left by Mr. Timberlake, the letters would not have been allowed to accumulate. It is my impression, that they must have been forwarded to him, after they had accumulated, either in consequence of an order from himself, or some friend.

To the sixth, he answers—We file all such instructions, but are not particularly careful of them; they are generally placed on a wire, and are thrown away or destroyed, at intervals, as they accumulate to any inconvenient extent. I have examined the files in my possession, but find no such directions.

To the seventh, he answers—There was a letter addressed to Dixon Timberlake, in the said post-office, about the first of April, 1838, and appears, from the files of the Constitutionalist newspaper, to have been regularly advertised. The rest of this interrogatory is replied to, as fully as it is in my power, in my previous answers.

To the eighth, he answers—I cannot answer this question more satisfactorily, than by referring to my replies to the 3rd and 5th interrogatories.

To the ninth, he answers—I think Mr. Timberlake left Augusta

in the spring or summer of 1837, because he ceased to call at the post-office for his letters about that time. I do not know where he went to; nor have I heard from or of him since, until the inquiries, made in this case, were propounded to me.

To the tenth, and last direct interrogatory, he answers—I know nothing further of the matters here inquired of, or connected with them; nor have I any belief on the subject that would benefit either party.

To the first cross-interrogatories, he answers—I lived in Augusta in 1837, and was post-master of that city, at the period referred to. Benjamin Hall was my principal assistant, and I had also the following other assistants or clerks, viz: George W. Morgan, John Scott, Cæsar A. Savage, Valentine Boisclair, Benjamin F. Hall and William Savage.

To the 2d, he answers—I was in no business that gave me any means of knowing Mr. Timberlake's credit.

To the 3d, he answers—I have stated, in my answer to the 7th direct interrogatory, that there was a letter in the office, about the month of April, 1838, which was advertised in the Constitutionalist. I know of no other evidence of this fact, than that to be found in the newspaper itself, which I have not, nor can I control.

To the 4th, he answers—It is the custom of the office, to forward all letters according to instructions, whether those instructions are written or verbal.

To the fifth, he answers—I have answered this, as fully as I am able, except that I had no other acquaintance with Mr. Timberlake than that begun and ended at the post-office.

To the 6th, he answers—I do not know what Mr. Timberlake has sworn, on the subject, nor do I pretend to compare my knowledge with his.

To the 7th, he answers—If such letters were forwarded to him in July, 1837, it must have been through his instructions, or those of some friend or agent.

To the 8th, he answers—I know nothing, but what I have testified to, according to the best of my knowledge and belief, that would show the matter inquired of, or any thing else material to either of the parties.

E. B. GLASCOCK.

Sworn to and subscribed, before us, this third day of Sept'r, 1840.

MICH'L F. BOISCLAIR, *Commissioner*, [L. S.]
JOHN W. WELDE, *Comm'r.* [L. S.]

And the said plaintiff, further to maintain the said issue, on his part, produced in evidence the deed of assignment executed by Benjamin R. Smith, which is in the words and figures following, to wit:

Deed of assignment—Benjamin R. Smith to Henry Grimke.

THE STATE OF SOUTH CAROLINA.

This indenture, made the sixth day of June, in the year of our Lord one thousand eight hundred and thirty-seven, between Benjamin R. Smith, merchant, of the City of Charleston, of the first part, and Henry Grimke, of the said city, of the second part, witnesseth:

Whereas, in consequence of the extraordinary pressure of the times, and the difficulty of making collections on debts, and of converting fixed property into active capital, except at ruinous rates, and of various unforseen losses and calamities, that have taken place throughout the commercial world, the said Benjamin R. Smith is unable to meet the demands against him with his usual punctuality, and has been compelled to suspend payment thereof.

And whereas, the said Benjamin R. Smith is willing and desirous to pay and satisfy his various creditors, to the full extent of his ability, and for that purpose has promised and agreed to make an assignment of all the property and effects of every sort belonging to him, in manner and form as is hereinafter set forth.

Now, this indenture witnesseth, that the said Benjamin R. Smith, in consideration of the premises, and of the sum of ten dollars, to him paid, by the said Henry Grimke, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, released, conveyed and confirmed, and by these presents doth grant, bargain, sell, assign, release, convey and confirm, unto the said Henry Grimke, his heirs and assigns, all and singular, the lands, tenements and hereditaments, of which he, the said Benjamin R. Smith, is seised or possessed, or to which he has any right or claim, and hereinafter more particularly described, in a schedule thereof, hereunto annexed, and made part and parcel of these presents, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof, together with all ways, passages, waters, water courses, commons, profits and appurtenances, to the said premises, or any part or parcel thereof belonging, or in any wise incident or appertaining; together, also, with all the estate, right, title, interest, property, claim and demand whatsoever, of him, the said Benjamin R. Smith, of, in, and unto the said premises, or any part and parcel thereof. To have and to hold all and singular, the same, unto the said Henry Grimke, his heirs and assigns; in trust, nevertheless, to and for the uses, intents and purposes, hereinafter expressed and declared, of and concerning the same.

And this indenture further witnesseth, that the said Benjamin R. Smith, in consideration of the premises, and of the further sum of

ten dollars, to him paid, by the said Henry Grimke, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred and set over, and by these presents, doth grant, bargain, sell, assign, transfer and set over unto the said Henry Grimke, all and singular, the negroes, goods, wares, and merchandize, moneys, accounts, stock, debts and choses in action, of him, the said Benjamin R. Smith, or to which he has any right, title, claim or interest, and all papers, books of account, and other writings appertaining thereto; and which said negroes, goods, wares and merchandize, moneys, accounts, stock, debts and choses in action, for the greater caution, are hereinafter more particularly specified and described, in a schedule thereof, hereunto annexed, and made a part and parcel of these presents. And also, all other effects, chattels, choses in action, and personal estate whatever, to which the said Benjamin R. Smith has any right or claim. To have and to hold, all and singular, the same, to the said Henry Grimke, his executors, administrators, and assigns, forever; in trust, nevertheless, to and for the uses and intents, and subject, in all respects, to the limitations, declarations, conditions and agreements, hereinafter expressed and declared; that is to say, in trust to take, hold, collect, receive, sell, assign, alien, dispose of, and convert into money, all and singular, the premises, and that, at public or private sale, for cash or on credit, as the said Henry Grimké shall think advisable; and after defraying therefrom the expenses, costs and charges, attending the execution of this trust, then to pay, appropriate and divide, the nett proceeds thereof, rateably and in proportion to their respective amounts, set down to their names, to and among such of the creditors of the said Benjamin R. Smith, as are set forth, specified and described in the schedule hereunto annexed, and marked "Schedule of debts preferred in the first class," and hereby declared to be part and parcel of these presents; the said debts being for money loaned, or some other consideration, of equally obligatory character. And if any balance remain, after the full payment and satisfaction of the said several debts, then in trust, to pay, appropriate and apply, such balance rateably and in proportion *to* their respective amounts, to the payment and satisfaction of all and every debt and demand, due unto R. Barnwell Smith by the said Benjamin R. Smith, or upon which he, the said R. Barnwell Smith, is liable as guarantor, indorser, surety, or in any other manner whatever, and so as fully to save harmless, and indemnify the said R. Barnwell Smith, his heirs, executors, administrators, and assigns, from any and every loss, detriment or damage, from, or by reason, or for, or on account of, the said Benjamin R. Smith; and if any balance remain, after the full payment and satisfaction of every such demand, and after full indemnification of the said R. Barnwell Smith, as aforesaid, then, in trust, to pay and apply the same to

and among the creditors, generally, of the said Benjamin R. Smith, rateably and in proportion to their respective demands. And if any balance remain, after payment and satisfaction made the said creditors, then to pay over and deliver the same to the said Benjamin R. Smith, his executors, administrators, and assigns.

And the said Benjamin R. Smith hath made, constituted and appointed, and by these presents doth make, constitute and appoint the said Henry Grimke his attorney, irrevocable, for him and in his name, to enter into or upon, and to take possession of, all and singular, the lands, tenements, and hereditaments of the said Benjamin R. Smith, and to make sale of the same, or convey the same in exchange for other property, and to sign, seal and execute, and as his act and deed, and acts and deeds of the said Benjamin R. Smith, to deliver any deed or deeds, conveyances and assurances for conveying the same, or any part threeof. (The purchaser or purchasers, his, her, or their heirs, executors, administrators and assigns, not to be afterwards answerable or accountable for any loss, misapplication, or non-application of such purchase money.) And also, to ask, demand, sue for, recover, collect and receive, all and singular, the negroes, goods, wares, merchandize, moneys, accounts, stock, debts, choses in action of him, the said Benjamin R. Smith, with full power and authority to compound, compromise, refer, arbitrate, adjust and settle, all debts, dues, demands, claims, matters and things whatever, of or belonging to the premises, or in any manner arising therefrom. And to take less than the whole for the same or any part, and on the receipt thereof, or of any part thereof, good and sufficient acquittances and releases to make, seal and deliver, and from time to time to appoint any one or more attorney or attorneys, clerk or clerks, agent or agents, for the purpose of assisting him in and about the execution of the trusts hereby reposed in him; and again, to displace and remove any such attorney or attorneys, clerk or clerks, agent or agents, at the discretion of the trustee for the time being, and from time to time to appoint and substitute any other person or persons, in the room or place of such attorney or attorneys, clerk or clerks, agent or agents, so to be displaced. And to make every such attorney or attorneys, clerk or agent, so to be appointed as aforesaid, such reasonable allowance for his or their trouble in and about the premises, as to the said trustees for the time being shall seem meet. And further, to do and execute all and every other act and acts requisite or expedient, for effecting the premises, as fully, amply and effectually, to all intents and purposes whatsoever, as she, the said Benjamin R. Smith, might or could have done in his own proper person, if these presents had not been made.

And for the considerations aforesaid, the said Benjamin R. Smith, for himself and his heirs, executors and administrators, has covenanted, promised, granted and agreed, and does hereby covenant, promise, grant and agree, to and with the said Henry Grimke, his

heirs, executors, administrators and assigns, that he, the said Benjamin R. Smith, his heirs, executors, administrators, and all and every person and persons whomsoever, having and lawfully claiming, or to claim, any estate, right, title, interest, property, lien, demand or claim, of, in or to the said premises, real or personal, or any part or parts thereof, shall and will, from time to time, and at all times hereafter, on the reasonable request, and at the proper costs and charges of the said Henry Grimke, assignee, as aforesaid, (to be paid from the said assigned estate,) his heirs, executors, administrators or assigns, make, do, seal, execute and deliver, or cause and procure to be made, done, sealed, executed and delivered, all, every such further and other reasonable act and acts, thing and things, devices, assurances and conveyances in the law whatsoever, for the further, better, and more perfect and absolute granting, bargaining, selling, assigning, confirming, conveying and assuring, all and singular, the premises, real and personal, and every part and parcel thereof, unto the said Henry Grimke, his heirs, executors, administrators and assigns, as by him, or his counsel, learned in the law, shall be reasonably advised, devised and required.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, at Charleston, the day and year first above written.

BENJ. R. SMITH, [L. S.]
HY. GRIMKE. [L. S.]

Signed, sealed and delivered, in the presence of

THOS. WARING,
C. G. MEMMINGER.

Schedule of Debts preferred in the First Class.

1.	B. R. Smith's due bill to W. E. Haskell, dated April 28th, 1837, with interest from date, for money borrowed, - - - - - -	$6000 00
2.	B. R. Smith's note, dated May 1st, 1837, to R. Barnwell Smith, money borrowed at 61 days,	3000 00
3.	B. R. Smith's due bill to Joye & Cheney, dated Feb'y 10th, 1837, with interest from date, for money borrowed, - - - - - -	1000 00
4.	B. R. Smith's note to Joye & Cheney, dated May 30, *a* 61 days, discounted in the Union Bank, for money borrowed, - - - - -	2300 00
5.	B. R. Smith's due bill to W. Barnwell & Co., for money deposited in his hands, - -	486 53
6.	B. R. Smith's due bill to J. R. Walker, - -	350 00
7.	B. R. Smith's bond to R. Barnwell Smith, dated 27th Jan'y, 1835, for money borrowed, -	5000 00
8.	Balance of ac't due by B. R. Smith, as assignee of Pennan & Bacon, - - - - - -	2940 00
		$21,076 53
9.	Am't advanced on my acc't, by Sam'l Brooks, of Philadelphia, to Henry Sloan, or whatever of the same may remain unpaid, from sales of 76 bales of cotton in Philadelphia, on which acceptances have been made to $4000, including the above, - - - - - -	2000 00

Personal estate assigned as the property of Benj'n R. Smith.

Statement of goods remaining on hand unsold.

16½ Boxes small lump tobacco.
6 Hhds. leaf do. do.
231 Kegs cut nails, brads and spikes.
12 H'lf boxes soap.
4 Coils damaged rope.
8 Barrels rye flour.
142 Boxes raisins, NR.
510 Coils bale rope.
29 Barrels white Havanna Sugar.
77 Do. do. Brown.

Counting house furniture.

1 Patent iron safe, 2 mahogany desks, and 2 plain desks.
Household furniture, plate, &c.
Horses, waggon and farming utensils.

The following negro slaves, viz:

Tom, Robert, June, George, Lavinna, Judy, Clarinda, Maria, Kit, York, Peter, Jacob, Silvia, Scilla, Sucky, Eliza, Josephine, Marian, Scipio, with the future issue and increase of the females.

Any surplus that may remain from sales of 76 bales of cotton, in hands of H. Sloan, on which acceptances have been made, after the payment of said acceptances.

Bonds, stock and notes, receivable.

Joint bond, Tho. M. Smith and others, dated 11 Dec., 1834, principal, - - - - - - -	$2911 88
67 Shares in Hamburg Bank stock, cost $70 pr. share,	4690 00
20 do. So. Ca. do. val. 50, 1000, on which a note is drawn on said stock for 900, -	100 00
R. & J. Caldwell's acceptance, dated 17 March, 1837, at 8 months, - - - - - - -	202 38
J. Rutledge's due bill, dated 17 Oct., 1836, - -	713 60
A. Millar's note, 26 May, 1837, at 60 days, - -	400 00
W. E. Snowden's, 27 March, do. 12 mos. - -	300 00
J. A. Stuart's, 11 May, do. 60 days, - -	587 32
Collier & Hill's, 8 Dec., 1836, 9 mos. - - -	858 10
Collier & Hill's, do. do. 12 mos. - - -	858 10
Marianna Smith's bond, dated 22 April, 1837, but without interest at her death, - - - -	1909 50

All the interest, estate, right, title, claim or demand, which the said Benj'n R. Smith, has or may have, in and to a certain personal property embraced in a marriage settlement, hereinafter mentioned.

List of real estate assigned as the property of B. R. Smith.

All the interest and estate of Benjamin R. Smith, in all that house and lot in Beaufort, So. Ca., being a remainder expectant, after the termination of the life estate of Mrs. Mary A. Smith, all the interest, estate, right, title, claim or demand, which the said Benjamin R. Smith has or may have, in and to a certain property, real and personal, embraced in a marriage settlement, executed on

the 28 November, A. D. 1828, between the said Benj'n R. Smith and Mary Pauline Haskell, and James H. Smith and Wm. E. Haskell, which settlement is recorded in the office of the Register or mesne conveyance, 30 June, 1832, and in the Secretary of State's office, 5 December, 1827.

SOUTH CAROLINA.

Personally appeared C. G. Memminger, and made oath, that he saw Benjamin R. Smith and Henry Grimke sign, seal and execute this deed of assignment, and that he, with Thos. Waring, witnessed the execution thereof.

Sworn to before me, this 20th day of June, 1837.

JAMES KINGMAN, *Not. Pub.*

Recorded 20 June, 1837, in Secretary of State's office, in Miscellaneous Record, book 5 Q, page 404 to 409.

And the following witness was then called, who testified as follows, that is to say:

T. W. Bacot, assistant in the post office at Charleston, testified, that by the 114th section of the 18th chapter of the Post Office Regulations, (issued by order of the Post-Master-General,) produced by him in court, it is directed, that "the post-masters, at offices where the nett balances average 500 dollars a quarter, will advertise, at the end of every month, the letters then on hand, which have not been already advertised." That the nett balances at the Augusta post office, average more than 500 dollars a quarter, and that it is the duty of the post-master at Augusta, to advertise the letters on hand once a month. That he, (the witness,) never advertised letters to persons having private boxes, unless they are not called for in six months.

And in the record of proceedings of said court, on the seventeenth day of April, in the aforesaid year, one thousand eight hundred and forty-one, is the following entry:

R. F. POE,
vs.
R. B. RHETT.

Mr. King was heard, in behalf of the plaintiff; Messrs. Memminger and Petigru, in behalf of the defendant; and Mr. Hunt in reply, on the part of the plaintiff.

And in the record of proceedings of said court, on the nineteenth day of April, in the year last aforesaid, is the following entry:

R. F. Poe,
vs.
R. B. Rhett.

The court charged the jury in this case, and they then retired to their room.

And the defendant's bills of exceptions are as follows:

Defendant's exceptions.

R. F. Poe,
vs.
R. B. Rhett.

In the Circuit Court of the United States, for the Sixth Circuit, South Carolina District—Be it remembered, that on the trial of this cause, and before the jury retired from the bar, the defendant, by his counsel, prayed the court to instruct the jury as follows:

1st. That by omission to enquire for the residence of Timberlake, or to send notice after him, the plaintiff has lost his right of action against him as drawer of the bill for $8000.

2d. That if the jury find that the note was given as collateral security for the bill drawn by Timberlake, and that Timberlake is discharged, then the plaintiff cannot recover against the defendant on the note sued upon.

Which instructions the court refused to give; to which refusal, the defendant, by his counsel, excepted, before the jury retired from the bar, and now excepts, and prays the court to sign and seal this bill of exceptions, which is done accordingly, this nineteenth day of April, in the year eighteen hundred and forty-one.

JAMES M. WAYNE, [L. S.]
R. B. GILCHRIST. [L. S.]

And the defendant, by his counsel, before the jury retired from the bar, further prayed the court to instruct the jury as follows:

1st. The parties having shown, that Timberlake had drawn upon Smith four bills, amounting in all to $21,500, which Smith had accepted, and had, at the time of the acceptance of the said bills, $10,000 in hand, received of Timberlake, to meet those bills, the defendant prayed the court to instruct the jury, that if the evidence was believed, then Timberlake had funds in the hands of Smith, and was entitled to notice.

2d. The defendant having shown that Timberlake resided in New York, and came habitually, between the months of October and January, to Augusta, and resided in Augusta during the winter and spring, and that Timberlake left Augusta on the 30th June, 1837, and that the notice of non-payment of the draft was forwarded by the notary in Charleston, to the plaintiff, on the 11th

July, 1837, and nothing was shown to prove that the plaintiff had made any inquiry after Timberlake, or endeavoured to give him notice.

The defendant prayed the court to instruct the jury that the plaintiff had not used due diligence to give the drawer notice.

3d. And inasmuch as evidence had been given, that the bills drawn by Timberlake on Smith, were drawn for purchases of cotton or stock, on the joint account of Smith and Timberlake, and Timberlake had diverted the property purchased on joint account to his own use, and was therefore bound to provide for the bills which fell due in May, to the amount of $13,500, and had not done so; the defendant prayed the court to instruct the jury, that the default of Timberlake to take up the bills for $13,500, did not excuse the want of notice to make him liable on the bill for $8000.

4th. And the defendant prayed the court to instruct the jury, that if Timberlake had effects at any time between the drawing and the maturity of the said bill, in the hands of Smith, he was entitled to notice.

5th. The defendant prayed the court to instruct the jury, that the insolvency of the acceptor and drawer, before the maturity of the bill, did not excuse the holder from giving notice of non-payment to the drawer.

And the court instructed the jury as follows: On the 1st instruction asked, the court instructed the jury, that if they believed from the evidence, that Timberlake had in the hands of Smith, when Smith accepted the bill for $8000, ten thousand dollars, that Timberlake was entitled to notice of the dishonor of the bill from the holder. But if the jury also believe from the evidence, that the $10,000, in the hands of Smith, was a fund raised upon Smith's letter of credit to Timberlake, and was to be applied to the payment of purchases on joint account, and had been so applied, and that there was an arrangement afterwards between Timberlake and Smith in respect to all the bills drawn by Timberlake, amounting to $21,500; that Timberlake was to put Smith in funds to pay bills to the amount of $13,500, of the $21,500, which were to become due before the bill of $8,000 became due, and that on Timberlake doing so Smith was to pay the $8,000 bill; and that Timberlake did not put Smith in funds to pay the $13,500, and that the same were protested, of which Timberlake had notice; then, that Timberlake had no right to notice of the non-payment of the $8,000 bill from the holder.

On the 2d instruction asked, the court instructed the jury, that if they believe from the evidence, that Timberlake resided in New York, and was a sojourner in Augusta, from time to time, as stated in the instruction asked, that then, as drawer of the bill, he was entitled to notice of its dishonour; but if the jury believe from the evidence, though he may have resided in New York, that he had made Augusta his residence since the fall of 1834 or 1835, and

that he had removed from Augusta, and out of the State of Georgia, after the bill for $8,000 was drawn, and before its maturity, that then due diligence had been used to give him notice of the dishonour of the bill.

On the 3d instruction asked, the court instructed the jury, that if they believe from the evidence, that the bills drawn by Timber lake upon Smith, were drawn for purchases of cotton or stock on the joint account of Smith and Timberlake, and that Timberlake had diverted the property purchased on joint account to his own use, and that after promising Smith, the acceptor, to take up the bills to the amount of $13,500, he had failed to do so, and had not supplied Smith with money to take up the bills for $13,500, after the same were dishonoured, up to the time when the $8,000 draft became due, and that there was an arrangement between Timberlake and Smith, after the $8,000 bill was accepted, that Timberlake was to put Smith in funds to take up the drafts for $13,500, which had been dishonored, and did not do so, that Timberlake was not entitled to notice of the dishonor of the bill for $8,000.

To the 4th instruction asked, the court instructed the jury, if they believe from the evidence, that Timberlake had effects in the hands of Smith at any time between the drawing of the bill, and the maturity of the said bill, that he was, as drawer, entitled to notice.

To the 5th instruction asked, the court instructed the jury, that the insolvency of the drawer and the acceptor, before the maturity of the bill, did not excuse the holder of the bill from giving notice of non-payment to the drawer. But the court further instructed the jury, that if the insolvency of the drawer and acceptor were known to each other, and that this bill was drawn to pay for a purchase on joint account, or a transaction in which they were partners, and that the property so purchased had been diverted by the drawer to his own use, and that the payment of all the bills had been the subject of private arrangement between the acceptor and the drawer, that then the holder was excused from giving notice of the non-payment of the bill for $8,000.

Whereupon, the said counsel, on behalf of the said defendant, before the jury retired from the bar, excepted to the aforesaid opinion and charge of the court, on the first, second, third and fifth instructions moved for, and now excepts, and prays the court to sign and seal this bill of exceptions, which is done accordingly, this nineteenth day of April, in the year eighteen hundred and forty-one.

JAMES M. WAYNE, [L. S.]
R. B. GILCHRIST. [L. S.]

The jury then retired for deliberation, and the court passed from the Issue Docket of the Circuit Court to hearing an appeal in the admiralty from the judgment of the District Judge; whereupon, the

parties and their counsel, in the case of Rhett and Poe, left the court-room. After the lapse of several hours, three of the jury returned, attended by the bailiff, as a committee in behalf of the jury, and enquired of the court, "Whether the court *instructed* the jury, that Mr. Timberlake is legally responsible to Mr. Rhett for the amount of his collateral $8,000?"

The District Judge being in his chambers, in the same building, was then sent for, but neither of the parties, or their counsel, were present or were called. The judges conferred and instructed the committee in writing, as follows: "If the defendant had paid the money voluntarily, or if he has to do so by the judgment of the court, Timberlake is responsible to defendant." Which instruction the committee took with them, under the hand of the judges, to the jury-room. The jury found a verdict for the plaintiff, which was ordered to be recorded, and the counsel then informed the court, that they had just heard, through the jury, of the charge given the committee as aforesaid, and thereupon offered to except to the said charge; but the court refused to receive the exception, inasmuch as the verdict had been already rendered and recorded.

Which said verdict is recorded as aforesaid, in the journal of the proceedings of the said court, on the twentieth day of April, in the year last aforesaid, the day on which the same was rendered, and is in the words and figures follwing, to wit:

Verdict.

We find for the plaintiff, eight thousand dollars, with interest from 11th July, 1837.

N. HAYDEN, *foreman.*

And afterwards, to wit: on the tenth day of May, in the aforesaid year one thousand eight hundred and forty-one, being a day of the aforesaid April Term of the said Circuit Court, judgment was signed in the foregoing cause, which said judgment is in the words and figures following, to wit:

Postea and Judgment.

Therefore, it is commanded, that the marshal of the Federal Court for South Carolina District, do summon forty-eight good and lawful men, to be drawn by ballots according to the directions of the act of the General Assembly of the said State of South Carolina, in such case made and provided, to be and appear before the said Chief Justice of the United States, and his associate, at the Federal Circuit Court of Common Pleas, to be holden at Charleston, on the second Tuesday of April next, by whom, and so forth; and who neither, and so forth; to recognize, and so forth; because as well, and so forth; and the same day given to the parties aforesaid, at the place aforesaid. And afterwards, that is to say, on the day, and at the place

aforesaid, before the justices aforesaid, come as well the said Robert F. Poe, by his attorneys aforesaid, as the said Robert B. Rhett, by his attorney aforesaid, and the jurors aforesaid, being demanded, some of them, to wit: N. Hayden, (foreman,) W. G. Benson, J. H. Steinmyer, Whiteford Smith, W. G. Wood, John Winthrop, H. H. Williams, C. A. De Saussure, John Strobel, Isaac Mordecai, Charles Kanapaux and Carsten Seebeck, come, and being drawn by ballot, according to the directions of the said acts of the General Assembly aforesaid, and sworn of the jury aforesaid, to say the truth of the within contained, do, on their oath, say, that the said Robert Barnwell Rhett did undertake and promise, in manner and form as the said Robert F. Poe has above thereof in his aforesaid declaration alleged against him, and they assess the damages of the said Robert F. Poe, by reason of the non-performance of the said premises and undertakings, over and above his costs and charges, by him, about his suit in this behalf expended, to ten thousand one hundred and forty-six dollars and sixty-six cents. Therefore, it is considered, that the said Robert F. Poe, a citizen of the State of Georgia, do recover against the said Robert Barnwell Rhett, a citizen of the State of South Carolina, his damages so found by the jurors aforesaid: and also three hundred and seventy-eight dollars eighty-nine cents, for his costs and charges aforesaid, to the said Robert F. Poe, by the said court now here, with his assent, adjudged; which said damages, costs, and charges, amount in the whole to ten thousand five hundred and twenty-five dollars, fifty-five cents; and be the said Robert Barnwell Rhett, in mercy, and so forth.

KING & WALKER,
per M. KING, *plff's Atty.*

Judgment signed this 10th May, 1841.
H. Y. GRAY, *Cl'k Cir. Ct.*

And afterwards, to wit: on the eleventh day of May, in the year last aforesaid, the said R. B. Rhett filed in the office of the clerk of said court, his bond, with security to prosecute his writ of error; which said bond was approved by the Honorable Robert B. Gilchrist, Judge of the United States for the District of South Carolina, and is in tenor and form following, to wit:

Bond.

THE UNITED STATES OF AMERICA, *South Carolina District.*

Know all men, by these presents, that we, Robert Barnwell Rhett, James Smith Rhett, and F. H. Elmore, are held and firmly bound unto Robert F. Poe, in the full and just sum of eleven thousand eight hundred and seventy-eight dollars ten cents, lawful money of the United States of America, to be paid unto the said Robert F. Poe, his certain attorney, executors, administrators,

or assigns; to which payment, well and truly to be made and done, we bind ourselves and each and every of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the eleventh day of May, in the year of our Lord one thousand eight hundred and forty-one, and in the sixty-fifth year of the independence and sovereignty of the said United States.

Whereas, a judgment has been obtained in the sixth Circuit Court of the said United States for South Carolina District, by the the said Robert F. Poe, against the said Robert Barnwell Rhett, for the sum of ten thousand five hundred and twenty-five dollars fifty-five cents, which said judgment was duly entered up, on the tenth day of May, in the aforesaid year of our Lord one thousand eight hundred and forty-one. And whereas, the said Robert Barnwell Rhett has since prayed a writ of error from the Supreme Court of the United States, at Washington.

Now the condition of the above obligation is such, that if the aforesaid Robert Barnwell Rhett, the plaintiff in error, shall prosecute his writ of error to effect, and answer and pay all such damages and costs as shall be adjudged, if he fail to make his plea good, and in all respects conform to, and abide by such order or orders, as may be made in the premises, then and in such case, the foregoing obligation shall be void, or else to be and remain in full force and virtue.

Judgment. - - - -	$10,146 66
Costs, - - - -	378 89
	10,525 55
	1,052 55
	300 00
	$11,878 10

R. B. RHETT, [L. S.]
JAMES SMITH RHETT, [L. S.]
F. H. ELMORE. [L. S.]

Taken and acknowledged before me,

R. B. GILCHRIST,
Judge of the United States for the District of South Carolina.

DISTRICT OF SOUTH CAROLINA, *ss.*

I certify, that the above named R. B. Rhett, James Smith Rhett, and F. H. Elmore, appeared before me, and severally acknowledged the above instrument to be their act and deed; and the security being by me deemed amply sufficient, I hereby approve said bond.

R. B. GILCHRIST,
Judge of the United States for the District of South Carolina.